

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council
Date of Meeting:	March 1, 2005
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. Public Employee Performance Evaluation/Appointment
(Pursuant to Government Code Section 54957)
Title: City Attorney
2. Conference with Labor Negotiators
(Pursuant to Government Code Section 54957.6)
Unrepresented employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 6:29 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steven Mattas reported the Council approved, at his request, the appointment of Richard Pio Roda as Interim City Attorney through the end of April at Mr. Mattas' request; the vote was 4 to 1 with Mayor Esteves voting no on that matter. Mr. Mattas further reported the second item involved labor negotiations involving the City Manager, an unrepresented employee; the Council, by a 3 to 2 vote, with Councilmember Polanski and Mayor Esteves voting no, approved a 10 percent out-of-class pay for the Interim City Manager retroactive to the first day he took over as Interim City Manager and also authorized 10 days of Administrative Leave that must be used during the 2005 calendar year and could not be cashed in if not used.

Mayor Esteves commented that regarding the first announcement, it was not that he was against Mr. Pio Roda; his preference had been Jane as her resume showed well established accomplishments, she had been the City Attorney for Oakland for approximately 10 years, and he felt she could do a good job as well. Mayor Esteves stated that in regard to the City Manager, he had voted no because the increase was approximately \$19,000 and felt at this time, it was difficult for the City to approve that kind of increase; the increase would be more than the previous City Manager's pay, which was \$203,000; union negotiations were coming and he did not want to give the perception that the City was setting stage for a 10% increase for everybody; he was also concerned that people might think that some bribery was being done, to which he would disagree.

Vice Mayor Gomez said he put the item regarding the out-of-class pay increase on the agenda because he felt Mr. Lawson should be treated like any other employee who worked out-of-class; it was standard practice of the City to pay 10 percent to any employee working out-of-class; Mr. Lawson did not have a \$100,000 severance package, did not live in a \$700,000 home that the City paid for as the previous City Manager had, and there was also a savings due to the fact that Mr. Lawson's position as Police Chief was not being back-filled, and that was why he had voted for the out-of-class pay.

Councilmember Livengood commented that there were a number of people within the City of Milpitas who were currently receiving 10% out-of-class pay, and he thought it only fair that Mr. Lawson be treated the same way the other City employees were treated; he thought it was

fair, that Mr. Lawson was doing a very good job as City Manager, and Mr. Lawson was saving the City a significant amount of money (the Police Captain's position created when Tom Nishisaka became Chief of Police and the Assistant City Manager's position were not being filled); the extra \$19,000 or whatever the number worked out to be was a relatively small amount compared to the savings Mr. Lawson was generating for the taxpayers; he felt that people should be awarded when they stay and they work hard and do a good job; and thought it was a matter of fairness, and that was his reasoning in supporting the request.

Councilmember Giordano said what she had brought up in Closed Session was the fact that there is no package attached to the Interim City Manager; he was merely working out-of-class. Councilmember Giordano recalled that during the years she worked at the City doing payroll, 10 percent was being paid for working out-of-class; it had been a common practice in the City for many years; and she felt very comfortable giving that opportunity to the current Interim City Manager.

WORK SESSION

Councilmember Livengood announced that he would be abstaining from the Work Session as well as items 15 and 18 on the agenda because they all related to KB Homes in one way or another, and he formerly worked for KB within the last year. Councilmember Livengood left the dais.

Acting Planning Manager James Lindsay reported this was a work session and just a preliminary concept and as such, no action was being asked of the Council; KB would be making a presentation on the preliminary concept to redevelop the 23 acre site owned by the School District; representative of the School District were present to comment on the proposal; the property was currently zoned Industrial Park, and introduced Ray Panek with KB Homes to make the presentation.

Ray Panek, KB Homes, presented their preliminary concept for the site commenting that if there was consensus tonight, they would then make the investment to refine the plan.

Vice Mayor Gomez inquired about park land dedication; Councilmember Giordano commented on the need to include the nearby residents in the process and said she would have a problem without having some kind of park without the land and addressing the concerns of the existing neighbors. Councilmember Polanski inquired how they would get beyond the lease and what was taking place with the School District.

Dr. Karl Black, MUSD Superintendent, said they conferred with their legal advisor and an exchange could be made; housing would bring new students and would benefit the District in that regard because 400 students had been lost in the last five years costing the District \$2 million; and the District hoped that the Council would move forward with this concept.

Mayor Esteves inquired about affordable housing. Mr. Panek said they were looking at that as part of the economic analysis and had included a percentage of moderate housing. Mr. Lindsay said the project site was located outside the Midtown Specific Plan area and outside the Redevelopment area, but the City had been very successful in negotiating at least 20 percent affordable housing from recent developments.

Vice Mayor Gomez inquired about the accessibility of the parkland to the open space and how useable it would be; how practical and easy it would be to walk over there.

Mike Mendizabal, Chair, MUSD School Board, commented on the 1996 \$65 million School Bond Measure that was leveraged into \$200 million in improvements and the need to keep their facilities in good shape. Mr. Mendizabal said this was an opportunity for the School District, an opportunity to keep Elmwood as it is, and an opportunity to create housing. Mr. Mendizabal further stated it would also continue the School District's partnership with the City, and to work this out with a developer where all the parties could walk away with something good.

Mayor Esteves expressed concern for housing adjacent to the freeway. Mr. Panek said they would have an acoustic study prepared and most likely there would have to be a masonry wall.

Dhaval Brahmbhatt, Economic Development Commissioner, said he thought the logic was good but if you look at where the two freeways intersect, it was a prime commercial location so rather than putting the two dealerships in the backside and homes in the front and then putting sound barriers, put the commercial property up front.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of February 15, 2005, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Giordano.

Ayes: 4

Absent: 1 (Livengood)

Councilmember Livengood returned to the dais at 7:04 p.m.

SCHEDULE

Councilmember Polanski announced that the Council CIP Subcommittee's next meeting was scheduled for March 30, 2005, at 6:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves announced that he had signed a proclamation declaring March 14-19, 2005, as "Science Fair Week," sponsored by the Santa Clara Valley Science and Engineering Fair Association, and the proclamation had already been forwarded to the Association.

Mayor Esteves read a proclamation proclaiming March 2005 as "American Red Cross Month" and presented it to Karen Borgstrom, Associate Director of Disaster Services of the American Red Cross. Ms. Borgstrom thanked the Mayor and Council for acknowledging the important role the American Red Cross plays in the community in preventing, preparing for, and responding to emergencies. Ms. Borgstrom shared a story as an example of the many different kinds of services provided by the Red Cross through the generous contributions of local citizens and the support of cities like Milpitas.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Mari Tustin, Senior Vice President, John Stewart Company, asked if procedurally, the Council would like to hear her comments regarding Terrace Gardens at this time or would she have an opportunity to speak when the item is considered. Mayor Esteves responded that she should address the Council when the item was heard.

Krista Potter, Milpitas, shared her experience since February 2000 in receiving a Federal Housing Rehabilitation Loan administered by the City of Milpitas, the City's refusal to allow Ms. Potter and her husband to act as their own general contractor, and the contractor's breach of contract with them. Ms. Potter said she did not agree with paying the contractor in full before things were made right, City staff was informed that they preferred to hire another contractor to finish the job and correct the problems, City staff would not agree to that and she and her husband were told the loan money would be frozen and not allowed to be used until it was agreed that a check to Rooney Construction would be signed. Ms. Potter further stated Rooney Construction filed bankruptcy and was no longer in business, and the City wanted her to pay Rooney Construction directly rather than a trustee; for the past five years, the City had been holding in excess of \$25,000 that belonged to her; she and her husband hired an attorney and spent about two years writing letters; and after two years, she ran out of money to pay the attorney and was now asking for the Council's help.

Vice Mayor Gomez requested background information from staff on the issue, along with any communications with Mrs. Potter, and to inform the Council on the details and any course of action that might be taken to resolve the matter.

ANNOUNCEMENTS

Councilmember Polanski said she had the opportunity to attend the Milpitas Senior Center renovation open house on February 25, 2005, and was impressed with the remodel, along with the Senior Center staff and seniors who were there, and thought it was going to be a great benefit to the community.

Councilmember Giordano, referring to the Community Advisory Commission (CAC) agenda for March 2, 2005, said she had not seen a discussion of invocations on the agenda and inquired when that would occur. Councilmember Polanski responded the CAC would be hearing approximately 19 CDBG presentations that evening and usually when the CAC holds the CDBG hearings, they try not to have many other things on the agenda; however, the invocation would be coming back.

Councilmember Giordano reported that in an effort to increase applicants to the City's Youth Advisory Commission, she had contacted Milpitas High School and on Wednesday, she would be addressing the High school's Leadership Class to recruit Leadership applications and next week, she would be making an announcement over the school's broadcast system to the entire student body and would be leaving applications at the school.

Mayor Esteves said he had attended the services for firefighter Captain Mark McCormack; he had joined the walk for Tsunami in Milpitas and thanked all those who walked with him; thanked the City's Police Services for providing police escorts for the walk; and he had attended the Bay Area United, sponsored by Milpitas based organizations, to raise funds for the Tsunami disaster. Mayor Esteves further stated he had asked Acting City Manager Lawson for a presentation on the next agenda on his recommended plan for the upcoming union negotiations including a time schedule, what parties would be involved, and suggested looking at salary surveys for each position and also retirement benefits.

Vice Mayor Gomez, referring to the union negotiations, said he wanted to give forewarning that if during that presentation he sensed that any issues were strictly "meet-and-confer" issues and could jeopardize any of the City's negotiations, he would immediately request that the discussion be tabled.

Mayor Esteves said he was asking for a plan of approach and something that should not be in Closed Session.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest, to disclose it for the record stating that Councilmember Livengood had previously stated that he would be abstaining on items 15 and 18 based on his prior relationship with KB Homes South Bay; if there were any further items, he would ask the Council to identify them now. There were none.

MOMENTS OF REFLECTION

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council. There were none.

AGENDA

Vice Mayor Gomez asked that items 10 and 11 be moved to the front of the agenda since they were items carried over from the previous meeting.

MOTION to approve the agenda, including the supplemental agenda item 9A, as amended by moving items 10 and 11 to after the Public Hearings.

M/S: Livengood, Gomez.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

Vice Mayor Gomez said he didn't see present in the audience the resident who removed item 6 from the Consent Calendar at the last Council meeting and suggested that it be added to Consent.

Councilmember Polanski requested items 12 and 13 be removed for discussion.

Councilmember Livengood suggested item 9 be added with the recommendation to approve the request for the fee waiver. Mayor Esteves inquired why the request was being made now when the event took place in January. Fire Marshal Patti Joki responded that the individual was out of the country and unable to attend the Council meeting until tonight. Mayor Esteves said he did not have a problem placing the item on the Consent Calendar with the recommendation to approve the waiver.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the addition of items 6 and 9 and the removal of items 12 and 13, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***6.**
Digital Voice Recorder
(CIP No. 3389)

Approved the purchase of a voice logger/recorder for the 9-1-1 Emergency Communications Center from Voice Print International Inc., in an amount not to exceed \$33,637.39. (Funds are available in the Enhanced Public Safety Project, [CIP#3389]).

***7.**
Gateway Sign Pilot Project
(Project No. 4227)

1. Approved Option 1 concept design for the Piedmont at Landess location.
2. Approved new CIP Project No. 4227 for the Gateway Sign Pilot Program and appropriation of \$20,000.00, which includes solar lighting, into this project from the Street Fund.

***8.**
Girls Softball Teams

Approved the Mayor's recommendations for a contribution of \$500.00 from the Council's Community Promotions budget to the North Valley Milpitas Bobby Sox for financial support of the Girls Softball teams to participate in this year's Nationals Tournament in Hawaii

***9.**
Fee Waiver

Waived permit and inspection fees, in the amount of \$468.00 for the "Chinese New Year Flower Fair" event to be held by the Chinese American Chamber of Commerce on January 29 and 30, 2005.

***14.**
Athletic Court Rehabilitation
Phase II (2005)
(Project No. 5069)

1. Rejected lowest bid by R&M Paving Contractors Inc, as the low bidder had requested to be relieved of the bid due to mathematical error in their bids, and awarded Construction Contract to National Surfacing Company, Inc. in the amounts of \$419,244.14 and \$185,806.05 (base and additive bids respectively) for a total of \$605,050.19.
2. Approved a budget appropriation in the amount of \$100,000 from the Park Fund.

***15.**
Great Mall Parkway/I-880
Capacity Improvements
(Project No. 4178)

1. Authorized the Acting Assistant City Engineer to execute the Contract Change Order to Granite Construction in the amount of \$16,805.
2. Approved Agreement Amendment with Korve Engineering the amount of \$27,195, subject to approval as to form by the City Attorney.
3. Approved a budget appropriation for \$100,000 from KB Infrastructure Fund. (Councilmember Livengood abstained.)

***16.**
RBF Consulting - Alviso Adobe
(Project No. 5055)

Authorized the City Manager to execute the amendment agreement with RBF Consulting, in the amount of \$21,160.00, for updated environmental studies, subject to approval as to form by the City Attorney.

***17.**
Urban Runoff Pollution
Prevention Program

Approved and authorized the City Manager to sign the First Amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program.

***18.**
Hetch-Hetchy

Authorized the City Manager to execute the permit with the City and County of San Francisco for the Use of the Hetch-Hetchy Right-of-Way for Public Parks Associated with the Elmwood

Right-of-Way

Development at a cost of \$2,023.88 per month (with an annual CPI adjustment) for use of the right-of-way. (Councilmember Livengood abstained.)

***19.
Dyett & Bhatia
Urban and Regional Planners**

Approved Amendment No. 1 to the Consulting Services Agreement Between the City of Milpitas and Dyett & Bhatia Urban and Regional Planners to require additional public meeting attendance at a cost of \$3,960, bringing the not-to-exceed amount of the original contract to \$107,030, and postponing the final Council presentation to April 5, 2005.

***20.
Proliant Servers**

Awarded the bid for the purchase of five (5) Proliant DL 380 servers to Surah, Inc. in the amount of \$27,776.95.

***21.
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$300,000 increase to Purchase Order 3481 to Meyers Nave for fiscal year 2004-2005 for Public Works construction litigation expenses including attorney's fees, costs and expert witness fees. (Funds are available in the City Attorney's operating budget for these services.)
2. \$5,063.90 to LC Action for Streamlight M3X AR15 gun lights and mounting hardware. The budget appropriation was approved by Council on January 18, 2005. (Funds are on deposit and available as part of the State COPS grant for 2005).
3. \$4,316.85 to Lincoln Equipment, Inc. for the purchase of a new Maxi-Sweep 5.5 HP pool sweep for the Milpitas Sports Center. The old equipment outlived its useful life and was no longer worth repairing. (Budget appropriation is needed from the Equipment Fund for this purchase).

PUBLIC HEARINGS (None)

UNFINISHED BUSINESS

**10.
Commissioner Outreach
Program**

City Clerk Gail Blalock reported this item was in response to a request from Councilmember Giordano for ways of improving outreach to encourage more residents to apply for appointment to the City's Commissions; the Council had received a memo listing what was currently done, some ideas and suggestions from other cities, and a list of suggestions of ways to implement a more extensive outreach program at a minimal cost. Ms. Blalock added to the list of suggestions creating some larger posters for display at various locations, including the SAFE Program graduates to the mailing lists since they are people who have already demonstrated an interest in serving their community, and utilizing the City Hall/Community Center electronic message board on Calaveras. Ms. Blalock also commented that one of the difficulties over the years was that Commissioners' terms expire at different months throughout the year which made recruitment efforts difficult and suggested changing the terms so they would expire at the same time (with the exception of the Planning Commission) would facilitate holding a mass recruitment event.

Councilmember Giordano thanked Ms. Blalock for the report and said she was pleased with most of the additional items suggested; however, she realized there may be some cost involved in reaching out to the entire community but minor costs could be very reasonable to achieve the goal of greater involvement. Councilmember Giordano said she would like staff to shift some of the current advertising funds to the print press media or radio that reach diverse levels of the community which were more reflective of the community, and she was not in favor of holding an annual open house because it would involve too much staff time.

Councilmember Livengood said he also appreciated the report, which was thought provoking in some areas; he agreed with the emphasis of creating a little more exciting presentation to people and while the application was functional, he thought coming up with something that had a creative element and that also would include the information needed from people was a good idea.

Mayor Esteves said he thought listing the openings on the agenda was a great idea but questioned the need to publicly announce them. Councilmember Giordano commented that Council meetings are televised and a public announcement would be a key element.

MOTION to direct staff to immediately start implementing all but the last of the ideas (with the exception of holding an open house) to insure there are many current applications and to ask the City Manager to report back by March 15 to inform the Council on the progress made on these items.

M/S: Giordano, Gomez.

Councilmember Polanski said she, too, appreciated the efforts on this; one of the areas brought up was bringing terms of Commissioners to a more central date (maybe two times a year) and noted that a lot of time in talking to Commissioners, they had to look up when their terms expired. Councilmember Giordano said she thought it was an excellent idea although the Council was looking at outreach efforts now but could deal with the term expirations at a different time.

Mayor Esteves asked for a restatement of the motion. Councilmember Giordano restated the motion to direct staff to immediately start implementing all (except the open house) but the last of the ideas to insure there are many current applications and ask that the City Manager report back at the March 15, 2005, meeting to inform the Council on the progress.

Kathryn Manento suggested adding radio and newspapers to the list and writing public service announcements to get it done for free; in her experience, how the announcement was written sometimes would get it done as a public service and that was an angle to watch.

VOTE ON MOTION:

Ayes: 5

ORDINANCES

11. Ord. No. 262.1 Open Government (Introduce)

City Attorney Mattas reported the item before the Council was the Open Government Ordinance that was coming back for introduction with the changes requested by the Council at its last meeting. Mr. Mattas further reported that in response to the request from Vice Mayor Gomez regarding time-line issues with implementing the requirements of the Ordinance, comments from the Departments were included in the Council's report relative to the six-month time period for the creation of the index records and the departmental web sites and all of the data that would have to go into those documents; staff was asking that the Council consider a longer period of time to accomplish that, suggesting twelve months, and the Information Services Department had identified some time and costs associated with implementation.

Vice Mayor Gomez said he understood the only item that would take time to implement would be the public records index and when he asked the question, he just wanted Mr. Mattas to make sure staff took a look at the entire Ordinance and that the Council gave staff plenty of time to implement everything. Mr. Mattas clarified that the only other item that the Ordinance called for was each department to have a web site, and it called for the placement on those web sites of documents that could be three years old; for staff to be able to pull together all of that information might take up to twelve months and asked the Council's consideration on that issue as well. Vice Mayor Gomez said that since a Commission was being established with this, it would give the Commission time to actually review that and work with staff on implementation, and he had no problem with twelve months.

Mayor Esteves commented that a twelve-month project was a major project and inquired what the budget target was. Information Services Director Bill Marion responded staff would need some definition on what form the index would take and would be looking for some guidance and direction on what the index would look like, and then staff would be able to prepare an estimate; there was a possibility that this would work well with a project that was currently underway for document imaging and the two may be interrelated; however, staff would need

to do a little more analysis on it. Mayor Esteves inquired if Mr. Marion had a ballpark estimate of the range for purely indexing. Mr. Marion responded the question would be to what degree would the index need to go; if it was simply a document, it would be relatively simple and departments would then just add their sections; the maximum could be a full-blown on-line document imaging, and staff thought it was somewhere in the middle.

Councilmember Polanski said this had been discussed in great detail, she appreciated the modifications that were incorporated since the last meeting in some of the areas; she was still concerned that it repealed everything in the current Open Government Ordinance, especially Councilmembers serving as Police Reservists or senior volunteers; she still believed that was bad public policy and knew that an ordinance carried much more weight than a policy; she also noticed that the voting record and attendance provisions of the current ordinance would be eliminated (a member of the community had called that to her attention); she knew that the lobbyist portion of the new ordinance was not as strong as the recommendation from the Community Advisory Commission; and even though she appreciated the modifications of keeping some items from the current ordinance (the 700 Forms and others), she would be voting no on the ordinance.

Councilmember Giordano said she may have gotten the call from the same community member about the compilation of the voting and attendance records and just to make sure nothing was being hid from the public in terms of how the Council voted, she looked into the matter and understood that the minutes were retrievable, so any member of the public could see who was voting, who attended, and what the issue was being voted on, and she did not have a problem with the compilation going away.

Vice Mayor Gomez said Councilmember Polanski and Councilmember Giordano brought up a couple of good issues and when the Commission was established, this should be the first order of business to discuss voting records and also the lobbyist ordinance to see if there was a way to strengthen that; with regard to the index of records and documents, the whole purpose in delaying this for six months (now a year) was for staff to review the Open Government Ordinance, to clearly define it, and determine whether or not this was feasible; and, if it came out that it was going to cost too much, the Council would determine whether or not it should be pursued.

Councilmember Livengood said the first question he had related to the mention of an SOP for the deletion of email after 60 days, when that was adopted, and if anyone had a copy. Mr. Marion said it was adopted in 2000, and he had a copy he could give Councilmember Livengood. Councilmember Livengood said the other thing he wanted to mention briefly was that the Ordinance as proposed went well beyond the current ordinance and does a lot of things that were extremely beneficial to the public.

Mayor Esteves, referring to the portion of the ordinance dealing with an elected official working as a volunteer, questioned if Councilmember Livengood would be able to vote for that portion because he was impacted directly. City Attorney Mattas responded because it was a non-compensated position, Councilmember Livengood could vote on this.

Mayor Esteves said as he stated during the last discussion, he was very uncomfortable with this Open Government Ordinance proposal compared to the current ordinance because of the cost, which was a major unknown; the priority of this kind of expenditure (his priorities were for programs and services to residents); the demand for this system, which was unknown; the collection of documents without a purpose (such as keeping drafts or recordings of Closed Sessions and releasing them when they are useless); questioned the value of keeping records for 10 years; questioned the definition of attendees for Council calendars; and said he didn't think this was being fiscally responsible. Mayor Esteves further stated the only portion he really liked was the three-minute maximum speaking time for speakers, as he had proposed in December, and he could not support the Ordinance.

City Attorney Mattas read the title of Ordinance No. 262.1.

MOTION to waive the reading beyond the title.

M/S: Gomez, Livengood.

Kathryn Manento, Senior Advisory Commissioner, said she was for open government but was very concerned when open government did not follow the California Constitution; and when open government will not explore the costs, something was wrong; if we want to be so open, open up a union for City staff as they deserve it; but, it was too irresponsible not to find out what things are going to cost and to put it on the table for taxpayers.

Mr. Mattas clarified that the final wording of the Ordinance would include the changes to Sections I-310-3.130, the Index to Records, and I-310-3.150, the Departmental Indexes, changing those timelines from six to twelve months. The maker of the motion agreed.

VOTE ON MOTION to waive the reading beyond the title: Ayes: 5

MOTION to introduce Ordinance No. 262.1.

M/S: Gomez, Livengood. Ayes: 3 Noes: 2 (Esteves, Polanski)

UNFINISHED BUSINESS

1. Council Handbook Amendment

City Attorney Mattas reported this item was consideration of an amendment to the City Council Handbook to incorporate the role of the Council Subcommittee related to appointments into the process for the Council's consideration of appointments to task forces, outside agencies, and to City Commissions (liaisons); as was indicated in the staff report, the Council was being asked to provide some direction as to whether or not it wished these amendments to extend to the appointments to boards and commissions.

Councilmember Livengood commented that the current process of appointing Planning Commissioners did not allow the Mayor to make that appointment (Planning Commissioners were appointed by the majority of the City Council), and that ordinance was adopted by the Council 10 years ago; what distinguished that ordinance and that process from other appointments was that State statutes specifically allow the Council to create Planning Commissions and to establish the membership on those Planning Commissions; however, the Government Code provides authority for a directly elected mayor to make recommendations, subject to confirmation of the Council, and says except as provided by Statutes; and the Attorney General had opined that to be State statutes; and so, with the Planning Commission, it actually could be treated separately. Councilmember Livengood further commented on the standing subcommittee consisting of two members of the Council with an advisory role by the Mayor for filling vacancies; this subcommittee would present its recommendations to the Mayor and the Council at a Council meeting at which time the Mayor's concurrence and the recommendations for appointments would be presented to the Council by the Mayor for confirmation; as he read that, it seemed to fit within the guidelines of what Mr. Mattas had written, and he thought that was a permissible process because it recognized that ultimately it was the Mayor who makes the recommendations, with the exception of the Planning Commission. Councilmember Livengood said he just wanted to make sure because it seemed to him that it did fit within those guidelines, and he just wanted to get some clarification.

Mayor Esteves inquired if this basically restricted the choices of the Mayor in terms of recommendations because he knew the Council could not restrict the field of candidates that a Mayor could select from. Mr. Mattas responded the Mayor could still make recommendations from any applicants that the Mayor deemed appropriate; it was then up to the Council as to whether or not they wished to confirm those recommendations. Mayor Esteves questioned the purpose of the subcommittee giving recommendations when all of his colleagues could forward recommendations to him. Mr. Mattas said that was a policy issue for the Councilmembers to consider; the City Attorney's role was to try to develop a process consistent with what the Council had directed.

Councilmember Giordano said she would be supporting this as it clearly talked about the standing subcommittee and its role; however, she questioned if the Council adopted the Open Government Ordinance, would the Council have to enact another change to the Handbook to talk about that commission or to see what kind of changes would be necessary to the Handbook. City Attorney Mattas responded staff would identify the Open Government Commission as one of the commissions in the Handbook.

Councilmember Polanski said she thought that Government Code Section 40605 was very clear; it allowed the Mayor, with the approval of the Council, to make the appointments; it allowed the Council to either accept or reject any of those appointments; and when she read it, it still made no sense to her to have a subcommittee present the recommendations to the Mayor and the City Council at a City Council meeting and, then, with the Mayor's concurrence, the recommendations presented to the Council by the Mayor for confirmation. Councilmember Polanski further stated that to her it was vague, confusing, and usurped the Mayor's authority under State law; she had no problem with the changes to page 4 of the Handbook, which was ad hoc committees and task forces; she had no problem with the changes/additions to page 13, regional boards; but, she would be voting no because of the added level of the subcommittee.

MOTION to approve the amendment to the City Council Handbook in its entirety.

M/S: Giordano, Gomez.

Kathryn Manento said she had to say once again that when dealing with State law, the citizens have to be very concerned about it and that was what the citizens looked for from the Council; cautioned against such a hasty move, and suggested following the Mayor's vision and taking the time to find out what the cost of all this was going to be.

Councilmember Livengood commented so that the public did not get the wrong impression, he had asked the City Attorney earlier in the dialogue whether the proposed changes were a violation of State law, and the City Attorney very definitively answered it was not a violation of State law and was, in fact, still within the guidelines of State law; he did not want to leave the impression that the Council was doing something in violation of State law.

Mayor Esteves said although he was not an attorney, he read simple English; and for him, it was a violation of State law because it attempted to restrict or influence the Mayor in his recommending authority.

VOTE ON MOTION:

Ayes: 3

Noes: 2 (Esteves, Polanski)

**2.
Terrace Gardens
Board of Directors
Application of the
Brown Act**

City Attorney Mattas said the Council had previously requested an opinion regarding whether or not the City Attorney's Office thought the State law would require that the Terrace Gardens Board of Directors comply with all aspects of the Brown Act; the City Attorney had previously provided a memo to the Council under separate cover; the item before the Council incorporated multiple aspects; the first was a discussion regarding that opinion; the second item was the list of actions and potential staff direction identified in the Council's staff report; and he would first speak to the opinion and then if the Council wanted him to go through the list of additional items, he would do it; if the Council wished to have some discussion or hear from the representatives from Terrace Gardens before getting into the separate discussion, that was in the Council's purview. Mr. Mattas proceeded to explain his opinion that Terrace Gardens comply with the Brown Act and the Attorney General's opinions supporting that opinion.

Councilmember Giordano said she wanted to put a motion on the table to make public the City Attorney's February 9, 2005, opinion on the applicability of the Brown Act's Open Meeting requirements to the Board meetings of Terrace Gardens (make the memo public).

MOTION to make public the City Attorney's February 9, 2005, opinion on the applicability of the Brown Act's Open Meeting requirements to the Board meetings of Terrace Gardens.

M/S: Giordano, Polanski.

Mayor Esteves said before the vote, he wanted one clarification and asked if that meant they could not at all have a closed session if they thought it was appropriate. Mr. Mattas responded any entity that complies with the Brown Act could have closed sessions as provided under the Brown Act (same kind of closed sessions the Council had). Mayor Esteves said that since the following speaker was a part of the discussion, she would not be restricted to two minutes.

Polly Marshall, Goldfarb and Lipman, said she was present as the Attorney for Terrace Gardens, Inc., and wanted to let people know that they were asked back in October 2003 to advise the Board whether the Brown Act applied to Terrace Gardens; it was at a time when they wanted to meet privately to discuss some sensitive financial matters; their interpretation at that time was that it did not apply because Terrace Gardens was not currently receiving funds from the City; a City Councilmember was on the Board, however, the funds were received 18 years ago; and in her opinion, there was nothing in the law that clearly stated Terrace Gardens should comply. Ms. Marshall commented on her memo to the Terrace Gardens Board in October 2003 (and she had copies for the Council) and said she wanted the Council to know that the Board had been operating in good faith, they did what a responsible Board would do and went to legal counsel, they researched it and provided an opinion, and there was not a whole lot of authority on this one way or another. Ms. Marshall again explained that she thought the Board was operating in good faith, there had always been one or more City Councilmembers on the Board and the City Manager (or designee), this issue had never been raised, and they were operating a beautiful, well-run project.

VOTE ON MOTION to make the City Attorney's memo public: Ayes: 5

City Attorney Mattas further explained his opinion detailed in the memo and the conclusion that the Terrace Gardens Board of Directors should comply with the Brown Act.

Mayor Esteves said there were others in the audience who wanted to speak before the Council took action.

Jim Yee, President, Terrace Gardens Board of Directors, shared some history about himself commenting that he was the project architect, got involved in 1985 when Councilmember Livengood was Mayor, he had been on the board for about 10 years, he served with Jim Lawson and Councilmember Polanski during those 10 years; and he wanted to reinforce the fact that the Board acted in good faith relative to the bylaws and what they believed was the law that pertained to their operation. Mr. Yee said they sought the advice of counsel and acted upon that in good faith; and he thought the Board still continued to do that to this day.

Mari Tustin, John Stewart Company (the administrators and management agents for the entire life of this project), said she was not going to speak to the Brown Act as she was staff and so that was out of her purview; but, she wanted to speak to a couple of other items that the Council would have under discussion. Ms. Tustin further stated she thought the 2004 budget had been submitted (item 6); the 2002 and 2003 audits were submitted to the Council and (she believed) were approved on the consent agenda; the 2004 audit was in process and would be submitted in draft form within the next three weeks; with respect to meals, it was very difficult to satisfy the multiplicity of ethnic palates at Terrace Gardens; in the 15 years that she'd been there, they had tried virtually every type of menu and meal service that could be provided, with a very high level of satisfaction; and invited the Council individually to come unannounced at either of the meal servings. Ms. Tustin asked the Council to consider in its actions regarding the Board how devastating it could be in terms of operations and what the residents might experience if they were suddenly without a Board of Directors.

Isaac Hughes said some people might remember that he ran for Mayor although the official fact book published by the City of Milpitas, along with the \$40,000 they spent, never mentioned that fact; when campaigning for Mayor, he went with witnesses and talked to dozens of people at Terrace Gardens and when the people that live there wanted to talk with

him alone in a room, the staff didn't let it happen; they complained about the meals, the games that were locked up and put away, they complained that their mail was controlled, and they all unanimously agreed that they wanted to have a newsletter and that the staff at Terrace Gardens would control that and wouldn't let them create one. Mr. Hughes said he was making a formal request to see all the books for two years ago, he wanted to see all the books of last year, he wanted to go three years back, he wanted to go back to 2002, 2003, 2004, and 2005, and wanted to look at all the salaries, where the funding comes from, how much Milpitas kicks in to run the program, and wanted to know what the plan was for the newsletter the seniors said they couldn't have, he wanted to know how long it would take Terrace Gardens to let him look at their documents that show how they spend their money and how much each gets paid, and wanted to know how many of the staff at Terrace Gardens gave money to people in the last five or six years to run for Council.

Councilmember Giordano said she would begin as she was the one who brought this to light and asked for the City Attorney's opinion; she wanted about five minutes because she thought it was important to set the tone of what she was trying to accomplish. Councilmember Giordano further stated, as the City Attorney had alluded to the fact that his opinion was one that Terrace Gardens may be applicable to the Brown Act, she wanted to quote a few things from the City Attorney's memo and his conclusion that was further supported by a 2002 Attorney General opinion. Councilmember Giordano thanked the City Attorney for his effort and opinion, she understood there was going to be differences between attorneys/differences of opinion; the opinion of the City Attorney was based on interpretation of relevant statutes, and guidance from Attorney General opinions and believed that Terrace Gardens should comply with all aspects of the Brown Act; and she wanted to avoid this issue arising again.

MOTION to require that the Terrace Gardens Board of Directors comply with all aspects of the Brown Act.

M/S: Giordano, Gomez.

Kathryn Manento asked Councilmember Livengood when he was Mayor and this came about, what actions did he provide if anything went wrong.

Councilmember Livengood said the question in front of the Council on the first issue was relating to whether the Terrace Gardens Board of Directors should or should not be subject to the Brown Act; he had briefly read the memo to the Board of Directors from Goldfarb and Lipman; he had also read the opinion prepared by the City Attorney; and there was no question in his mind but that this Board did fall under the purview of the Brown Act.

Vice Mayor Gomez asked Mr. Yee what the Board had been discussing in closed session. Mr. Yee responded he recalled the Board had discussed the construction defects (on Jim Lawson's care), appointments to the Board, which was more of a personnel issue, and maybe financial issues. Vice Mayor Gomez questioned how the Board could consider appointments a personnel issue because he thought the people who actually live in that facility and the taxpayers of the City should know the qualifications of the people who are serving on the Board, and asked Mr. Yee to help him understand. Mr. Yee clarified that he was a temporary Board Member for about eight months and just recently elected Board President; he believed this was the procedure the Board had in the past, from Jim Lawson's period, at least when he was on the Board.

Vice Mayor Gomez raised issues regarding the number of Councilmembers serving on Terrace Gardens, the bylaws being changed in 1998 reducing the number of Councilmembers from two to one, and inquired if the bylaws could be changed to limit the number of members on Terrace Gardens. City Attorney Mattas responded one of the issues on the agenda tonight, which he had not researched yet, was the ability to amend the bylaws without having the amendments ultimately approved by the Council; if the Council wanted him to look at it, he could; and he wasn't aware of the amendment to the bylaws that Ms. Marshall had referred to.

Councilmember Livengood said before voting on the motion, he would like to have the question answered about when there's a conflict between the Regulatory Agreement and the bylaws, which document would prevail.

Councilmember Polanski said she believed the Terrace Gardens Board of Directors she'd worked with for the past two years had no objection at all to ensuring that the bylaws and the Regulatory Agreement were completely in compliance; she thought it was stated quite clearly that the Terrace Gardens Board of Directors was acting under good faith; they had been doing what had been done for eight years before she was a member of the board; there were three different opinions now regarding the Brown Act; but she believed that if you asked the Terrace Gardens Board to strictly adhere to the Brown Act, that they would be willing to do that.

Mayor Esteves said he had been reading the contract and the way he interpreted it, Terrace Gardens was really a separate entity from the City.

Councilmember Giordano commented that the bylaws were amended on June 25, 1998, to have only one Councilmember and asked to make those bylaws effective, did they need to be recorded. City Attorney Mattas said it was possible but he would have to confirm it; normally when you do an amendment to bylaws, as he understood it for a corporation, they are filed with the Secretary of State's office but his office, could look into that; he recommended that before the Council took any action relevant to membership, it be looked at.

Polly Marshall said that amendments to Articles of Incorporation were filed with the Secretary of State and amendments to bylaws were simply adopted and kept with the records of the corporation. Mr. Mattas said he could look into that and report back to the Council.

Councilmember Giordano called for the question (regarding the application of the Brown Act).

VOTE ON MOTION:

Ayes: 3

Noes: 2 (Esteves, Polanski)

City Attorney Mattas reviewed the second item on the list, the consideration of a request for an amendment to the Terrace Gardens bylaws requiring that any amendments to the bylaws be approved by a majority of the City Council. Mr. Mattas asked the Council to also look at item number 11 on the Supplemental Agenda which restated consideration of the request and direction to the City Attorney to prepare a memo regarding an amendment to the Terrace Gardens bylaws requiring that any amendment be approved by a majority of the City Council and, again, the City Attorney had not issued an opinion on that issue.

MOTION to require any changes to the Terrace Gardens bylaws be approved by a majority of the City Council.

M/S: Giordano, Livengood.

Councilmember Polanski questioned how the Council could do that without first getting direction from the City Attorney on the Regulatory Agreement and the bylaws. City Attorney Mattas said his recommendation to the Council on this issue was that the Council have the City Attorney's office analyze whether or not the Council has the authority to do that. Councilmember Polanski said she would be more than happy to have it analyzed and reviewed and then brought back, if appropriate.

VOTE ON MOTION:

Ayes: 3

Noes: 2 (Esteves, Polanski)

City Attorney Mattas said the third item was consideration of the status of Terrace Gardens Board Members appointed in 2004 and 2005; that was also related to item 12, discussion and possible action to remove members of the Terrace Gardens Board of Directors appointed in 2004 and 2005 according to the Corporation's bylaws; and the members appointed in 2004

and 2005, as he understood it, included Don Peoples, Thomas Valore, Ronald Lind, Gerald Rosenquist, Celia Salazar, and Councilmember Giordano.

Councilmember Livengood said the issue, as he understood it, was that for some period of time there had been meetings held outside the privy of the public to appoint and to discuss potential candidates for Terrace Gardens; however, what he was hearing here was that this had been going on for 10 years. City Attorney Mattas clarified that would not include the Councilmember appointees or the City Manager appointee, both of whom were selected by the Council.

Councilmember Giordano said she was looking at just 2004 and 2005 as not being in compliance with the Brown Act; she believed vacancies should be widely publicized, interviews should be made in public, and discussion and appointments should be made in full view of the public; she also understood that the way to rectify these violations of the Brown Act was to redo the actions; in fact, this Council did such an action last year; before making a motion, she wanted to state this was no reflection on the affected Board Members; and should her motion pass, she sincerely encouraged each of the Board Members to apply and participate in the public process required by law.

Councilmember Polanski said she found it very despicable to accuse the Terrace Gardens Board of Directors of violating the Brown Act for the last 15 years, especially in the last two that she served; she felt that was saying that all the Board's actions were null and void; she thought, as it was stated earlier, that the Terrace Gardens Board of Directors had acted in good faith; they were acting based on their attorney's opinion; and just because this Council this evening decided that, by majority, that they have violated the Brown Act based on Ms. Giordano's interpretation, she thought it was appalling to these people who applied and had been giving voluntarily of their time and energy; they were good, professional people and were probably some of the most highly qualified people she had ever seen serving on the Terrace Gardens Board; and she believed this action was very despicable and was very vengeful and if this was the voice of a new government, she was sorry that she was a part of it this evening.

Polly Marshall said as an attorney, she represented a fair number of non-profit housing corporations and said it was not easy to get board members; it was a volunteer position with a lot of responsibility; if the Council took the action tonight that was being considered, the only Board Member left would be Mr. Yee and the Councilmember and the City Manager; and it may not be intended to be personal but it would make it extremely difficult to get Board Members. Ms. Marshall pleaded with the Council, as a member of the public at this point, that it was so harmful to a non-profit and harmful to the residents who live there to have their whole Board fired by the Council and expressed concern what it would do to their peace of mind.

Mr. Yee said he had been associated with the Board for 10 years and there had been difficult times and difficult issues and in some way, it had not been much fun; but, the way he felt right now, to have everything questioned relative to his position on the Board was very difficult; he was appointed 10 years ago and assumed it was the very same process the Board goes through now because the Board had gone through the same process for 10 years with Jim Lawson, with Councilmember Polanski, with the City Manager's designee; the Board acted in good faith with the understanding that those members were in compliance and now the Council was raising questions that the Board was not compliant; and for him to be the last Board Member really was a problem; his profession was based on credibility and he felt right now that his credibility had been questioned for 10 years; the Board did not get paid, they put hours in, they heard residents complain about things, and they still tried to go through its business; and he really did feel like he was being slighted and really questioned about his integrity; and he believed he stood for integrity but felt his integrity had been questioned.

Carmen Montano said she was going to shed some light on how this whole issue came about and described what happened in August 2003 when she applied to be a Board Member. Ms. Montano described how she did not receive a call or feedback from Terrace Gardens; she

asked Mayor Esteves and asked former City Manager Wilson and they didn't know what was going on; she then came before a City Council meeting and read a letter in which she shared her concerns that Terrace Gardens was violating the Brown Act; she sent a letter to the City Manager and the City Attorney; she had not heard from either Terrace Gardens or the City of Milpitas regarding this matter; the bottom line was that she was denied due process in her application and to her being denied that due process, she was considering an attempt to sue for discrimination. Ms. Montano further stated she hoped the Council would restructure and make some major changes on the Terrace Gardens Board.

Kathryn Manento said she stumbled on Terrace Gardens by accident and if they've been in business for 18 years, she had to applaud the Board of Directors because it was absolutely beautiful; to the lady who just spoke, she heard her say she filled out her application and qualified for five out of 10 things needed; and to her, to only have five of the 10 things meant you still had to look for something better. Ms. Manento said Ms. Montano was a lovely lady but she said she only met five of the 10 requirements but she shouldn't take this to heart, because everybody is looking for the most qualified to fill the shoes.

Ms. Montano said there weren't any requirements, they were things that they wanted and there were more than five; what really irked her was not so much that she didn't get appointed but that she didn't get a call, she didn't get any response, and it was almost one and one-half years before she got any response and something was wrong with that.

Ernestina Garcia said she had been looking at Terrace Gardens for years because she remembered the first people who brought Terrace Gardens together. Ms. Garcia further stated the Council should take a good look at what was going on here because there was discrimination going on; there was a lot of racism going on of which the Council better open their eyes to it. Ms. Garcia said she disagreed with a lot of stuff going on in this City and the Mayor had better be accountable.

Isaac Hughes said the attorney who spoke commented that they've been doing work with non-profits for a long time, and he wanted to know the name of those other organizations she works for because if she's doing this kind of a job in Milpitas, how many more years and how many things has she contributed to that might need to be looked into. Mr. Hughes further stated he would volunteer for the Board because he didn't fear any of these people.

Kathryn Manento said she hoped Mr. Mattas would agree that he, as well, should just be open right before the people; she agreed with Ms. Garcia about the Mayor being accountable; the Mayor was elected to be our leader but if there are too many chefs in the kitchen/on the bench and nobody wants to follow, then the Mayor cannot be the visionary.

Councilmember Giordano said she did not think this was about personalities but about the actual application process, the screening – about the legalities and about being in an open session adhering to the Brown Act. Councilmember Giordano reminded the Council about the provision in the Regulatory Agreement that the Board of Directors may be removed at the discretion of the majority of the City Council.

MOTION that the 2004/2005 Terrace Gardens Board Members be removed from office.

M/S: Giordano, Livengood.

Tom Valore said he was a recent appointee to the board of Directors; he'd only served on the Board for approximately six months; when he was asked to submit an application, he was under the impression this Board was not a political entity; if he had known he'd be subjected to the kind of treatment going on this evening, if he knew he was going to be lambasted the way he had been tonight, he would not have submitted an application; he had no political aspirations and no reason for being on the Board other than he wanted to serve his community, and that was the basis under which he submitted an application and accepted membership on the Board. Mr. Valore further stated there was an underlying agenda that had not been revealed and he objected to it; it hadn't surfaced, and he would not be removed from the

Board because he'd done something illegal; his business did not allow for something like that so, therefore, he formally submitted his resignation at this particular point in time; and he was sure the Council would get the resignations of other members on the same basis.

VOTE ON MOTION:

Ayes: 3

Noes: 2 (Esteves, Polanski)

RECESS

Mayor Esteves recessed the City Council meeting at 9:48 p.m. The City Council meeting reconvened at 9:57 p.m.

City Attorney Mattas reported the next item was consideration of providing direction to the City Council Appointment Subcommittee to return with a recommendation for appointing a second Councilmember to the Terrace Gardens Board of Directors as provided for in the Terrace Gardens corporate bylaws; with regard to this item, the Council may wish to consider holding off that direction until they had been advised as to the issue related to the amendment of the bylaws (whether or not there are actually two Council seats on the Board of Directors).

Vice Mayor Gomez said he concurred with the City Attorney that it would probably be beneficial to actually wait to find out what supercedes what, whether it be the bylaws or the Regulatory Agreement.

Councilmember Giordano agreed with that; however, if the City Attorney came back with the opinion that the bylaws didn't apply and that there should be a second appointment from the City, she would like to have that appointment in line to be made quite readily rather than having to go through a lengthy process. Councilmember Giordano inquired if the Subcommittee would be meeting again.

Councilmember Livengood said they did have a published meeting of the Subcommittee; and he believed Mr. Gomez was recommended as the second Councilperson if that came to bear.

Mayor Esteves, addressing Mr. Mattas, inquired if the Mayor had some authority here just like commissioners and board members. Mr. Mattas said his office would report back to the Council on that issue; the appointing document speaks to the appointment of a representative from the City Council, and there were issues he would want to look at to make sure that was clear; ultimately, it would be the Mayor's recommendation.

Mayor Esteves inquired if everyone was in agreement that this part would be skipped for more legal information.

Councilmember Giordano said she would like to make a motion.

MOTION to have the City Attorney prepare direction to the City Council on the applicability of an appointment of a second Councilmember to the Terrace Gardens Board of Directors.

M/S: Giordano, Livengood.

Mayor Esteves stated he was comfortable with the amendment on the bylaws made already, it had been working that way, and he did not see a benefit for the second one.

Councilmember Polanski said her only comment would be there was an amendment to the bylaws made and at that time, Councilmember Jim Lawson approved that amendment; she could assure the Council that after the vote this evening, it appeared that the Terrace Gardens Board of Directors might need a second member of the City Council since there's only one member that was actually left (former City Manager Jim Connolly) and the Councilmember that had been appointed.

VOTE ON MOTION:

Ayes: 3 Noes: 2 (Esteves, Polanski)

Mr. Mattas said the next item was item 5, consideration of directing staff to prepare a status report related to the submission of Terrace Garden annual audit documents for 2002, 2003,

and 2004 to the City; the Council had heard from the representative from the Management Company that the 2004 audit would be forthcoming; and there was reference to the submission of the 2002 and 2003 reports; he could report to the Council that he was aware for sure that the 2002 report had been submitted to the Council, and he would confirm for the Council whether or not the 2003 report had been submitted.

Councilmember Giordano said to move this along, the City Attorney could be directed to review items 5, 6, and 8 and come back with the reports and reviews on those.

MOTION to have the City Attorney review the Corporate bylaws and the Regulatory Agreement with Terrace Gardens to determine the Board of Directors' obligations under both documents to determine any areas of non-compliance by the Board of Directors and outline possible City recourse to areas of non-compliance.

M/S: Giordano, Livengood.

Councilmember Polanski said she had the financial reports ending December 31, 2003, and December 2002, and passed them down to the City Attorney to help with his research; she also had the City Council minutes accepting the Terrace Gardens Annual Financial Report for 2002, the Terrace Gardens, Inc. Fiscal Year 2004 Operating Budget, the Fiscal Year 2003 Operating Budget for Terrace Gardens, and stated all of this was easily accessible through the City's web site; so, she did believe they had been complying as per the Regulatory Agreement and the bylaws.

Mayor Esteves said as a member of the City Council in the previous years, he remembered the Council did receive the audit documents, including the Budget documents, and on the 3rd one – compliance – he did not think that the City Council should micro-manage Terrace Gardens.

City Attorney Mattas confirmed, as part of item 6, that the Council may wish to, if it desired, withdraw that as part of the motion; he had confirmed the date previously – and was going to report that to the Council this evening, but he appreciated Councilmember Polanski raising that as well; the 2004 Terrace Gardens Budget item was approved previously by the Council; item 6 was approved previously by the Council

Councilmember Giordano said she would retract that from the motion.

VOTE ON MOTION:

Ayes: 3 Noes: 2 (Esteves, Polanski)

Mayor Esteves said item 7, consideration of requesting staff to review and report to the City Council with respect to complaints about meals at the Terrace Gardens facility, was his request simply because he heard some complaints about the meals; and his point was not to question the Board, but he would like to know if the problem really existed, if the Council would like to help or could help – financially or otherwise; he heard there were some financial restrictions and inquired if the Council was willing to help or could it help.

MOTION to direct staff to look at the problem and come back with a recommendation of how much the Council could help or to see how much help was needed for the City Council to approve.

M/S: Esteves, Polanski.

Councilmember Polanski said the food had been an issue for many years and would continue to be one no matter whether the Council decided to subsidize or not; whomever ends up being on the Terrace Gardens Board of Directors would find that with the aging facility, there were a lot of other needs, and the Council may have to come to grips now with the fact that they have a facility that will require a lot of maintenance.

Councilmember Giordano said she would support the motion; she felt it was a low budgetary item to have staff involved in looking at the meals and giving the Council a report back.

Vice Mayor Gomez said he would be voting no on the motion; he felt it should wait until the budget process for this discussion because the daily meal program was being talked about, and he would like to hear from the management of Terrace Gardens during the budget process as to what kind of support they're looking for.

Isaac Hughes said everybody's talking about different things and now even talking about trying to resolve a problem of food that people complain about and, for all we know, there's people who work there that are complaining about the food; what the Council was not making clear, and what the City Manager might consider because he's involved with the Budget now, which monies come out of the City to help Terrace Gardens; inquired what was the responsibility of the City directly for the list of things being talked about; what was the literal responsibility of the City regarding the food; what was the responsibility of the City regarding the housing conditions; what was the responsibility of the City regarding the Board; he had not heard anything definitive, in other words, rules that are played by before you get into this "it's his fault/it's her fault" --. he did not see anything that was being clearly defined for the public; all we're hearing is bits and pieces of what you guys have discussed over the telephone or at other meetings in the past, but the public doesn't clearly understand what their responsibility is to manage -- whatever the problems may or may not be -- and whatever your responsibilities are to manage Terrace Gardens, whatever they may or may not be; and nobody clearly in the public knows about the land -- where it came from -- the monies that were involved.

Ola Hassan, proprietor, Ola's Corner, said he was glad he was here tonight to witness the whole meeting and hear all the conversations; what was really surprising to him was that he sees a lot of seniors from Terrace Gardens at the coffee shop and they talk about the poor food; he thought it was really unbelievable and spoke about the poor health of the seniors at Terrace Gardens; referred to the help the city of Pleasanton was providing help to its seniors, and felt Milpitas could also do this; suggested the Council put this into its agenda and accommodate the businesses that have something to render to the City of Milpitas, the seniors, and its residents.

Mr. Valore, speaking as a former member of the Terrace Gardens Board, suggested that before the Council did anything precipitously, the Council should evaluate the budget that was not yet submitted for 2005 and possibly take into consideration some recommended changes to the Regulatory Agreement, which was not submitted because of this hullabaloo that really did nothing for the residents other than delay some actions that he felt were significant and serious; he was asked to be on a subcommittee because of his background both as a manager and as a finance person, and they uncovered some significant changes that needed to be made from the standpoint of rents to be collected; and if those changes were not made, the City might find itself in the position of having to cough up more than just a few bucks for meals.

Mayor Esteves restated the motion to direct staff to look at the meal issue at Terrace Gardens and to come back with figures defining the issue, and if it's financial, how much, and alternatives, etc. so this Council could act whether it wants to help them financially or otherwise.

Acting City Manager Lawson inquired if it was the meals or was it the service. Mayor Esteves said it was the meal itself, basically the cost of the meals, having to pay for them when they are sick because they are obliged to pay the meal whether they are there or not; the cost of the meal was one issue but it was basically more financial from what he understood from the residents; he did not think they had a problem with the service -- from what he heard, the service was excellent.

VOTE ON MOTION:

Ayes: 3 Noes: 2 (Gomez, Polanski)

Mayor Esteves stated the motion passed; again, staff will have to look at this issue and see what the City Council could do.

Councilmember Polanski explained the reason she voted no was she believed the Council needed to look at everything involved with Terrace Gardens – with the Regulatory Agreement – as there was no longer a Board of Directors for Terrace Gardens; a budget had not been brought forth; there were a number of issues regarding the rents; when she was appointed to the Terrace Gardens Board of Directors, she thought she spent the first year investigating the problems with food, the problems with service, the problems with why they had to pay this or that; she thought the reserves had been for several years subsidizing the meal program, and that was why when the budget comes forward and the Regulatory Agreement, the Council would see that, for whatever reasons, previous Boards of Directors had decided to subsidize the meals and that didn't leave much money in reserves for some of the major repairs that were coming up; so, she voted no because she thought this needed to be looked at in its entirety and not just specifically with the meal portion.

Mayor Esteves said if Councilmember Polanski would make that as a motion, he could support it because he would really like the City to take a look at the whole picture; and the reason he put meals separately was he felt like it was a more immediate issue; hopefully, it could be addressed sooner since the whole picture could be a longer process.

Councilmember Polanski said she could make it a motion but right now, however, she did not know if there was a Board of Directors to bring the Regulatory Agreement forward; she did not know who to direct staff to go and investigate and to review all this; and she did not think a motion was needed because she thought it was going to become very obvious that the City was going to have to look at the entire big picture very shortly now.

City Attorney Mattas reported item 9 was consideration of request for a report from staff related to the listing of City Councilmembers who have served on the Terrace Gardens Board of Directors; staff was aware of the more recent ones, but if the Council would like, a report could be prepared from the beginning.

Mayor Esteves inquired what the objective of the request was. Councilmember Polanski stated she had no idea who made the request; but she did know that Elwood Johnson served, Jim Lawson served, Barbara Lee served, she served, and thought Councilmember Livengood said he served at one time during the initial set-up; and to her knowledge, those were the only Councilmembers who had ever served.

City Attorney Mattas said item 10 may be moot already – this was consideration of the City Council requesting Terrace Gardens' legal representatives to make a presentation before the City Council; Ms. Marshall had already done that this evening.

Councilmember Giordano requested the Council move past item 10 and requested notification be sent to Terrace Gardens of the actions the Council took tonight. Mayor Esteves stated he agreed.

Vice Mayor Gomez inquired if it would go to the Board or the residents. Councilmember Giordano clarified it would be the Management Board and Terrace Gardens in its entirety.

City Attorney Mattas said he thought the other items had already been dealt with (11, 12, and 13); and inquired, with the last request, was the notice to the Management Company and the Board Members, or to the actual residents as well. Councilmember Giordano said not the residents but the Management Company and the Board.

**3.
Ola's Exotic Coffee Inc.
Economic Incentives**

Councilmember Polanski said she didn't need a presentation; she removed this item from the Consent Calendar at the last meeting because of concern for what the incentives were and because of the problems incurred with Campbell's Corners with this applicant.

Councilmember Polanski said she thought Councilmember Livengood had made a statement about the City not getting involved in any kind of ventures with groups or developers or businesses because they usually fail, and she wanted to know what was being looked at as incentives.

Principal Analyst Cindy Maxwell responded a precedent was set with the request from Intersil to also have similar discussions that incentives as well; there were only two items she was aware of that had been offered in the past -- taking a look at what the actual increase in revenue would be to the City to see whether the City would be interested in providing any reductions in fees to the applicant; the second one had never been pursued but would be to see if they might find having some special allowance at a City facility for their workers as attractive for coming into the City or expanding.

Councilmember Polanski said that based on the comments Councilmember Livengood had made, she wanted to see what type of incentive it was and apologized to Mr. Hassan for not getting to his item on the last agenda.

Mayor Esteves suggested bringing the matter to the Economic Development Commission for their ideas.

Councilmember Giordano said she attended the "Good Morning Milpitas" last Friday where Assembly Member Torrico addressed this issue, so she was glad to see this come forward at the local level because it was being addressed at the State level; Assembly Member Torrico has introduced AB37, which gives new businesses immediate tax credits, and AB1580, which would give incentives to manufacturing companies. Councilmember Giordano said she thought we will be seeing more interest in this in our own City and when the Economic Development Manager is hired, she thought this should be one of the responsibilities to look into.

MOTION to direct staff to enter discussions with Ola's Exotic Coffee Inc. regarding economic assistance incentives that may be available.

M/S: Polanski, Gomez.

Ola Hassan said it was a privilege for him to address the Council tonight. Mr. Hassan further stated he wanted to correct Councilmember Polanski's comments stating that the City didn't have a problem with him; he had a problem with the City because he did everything right, it cost him \$1.7 million, and the City didn't give him a dime. Mr. Hassan explained his coffee business stating that he didn't need the City's money; his business would be good for the City, and he wanted the City's moral support.

VOTE ON MOTION:

Ayes: 5

**4.
Calpine Los Esteros Critical
Energy Facility Update**

Acting Planning & Neighborhood Services Director Heyden presented an update on the Calpine Los Esteros Critical Energy Facility Peaker Plant located in north San Jose. Ms. Heyden reviewed the status of Phase 2 consisting of increasing the output of the facility and improvements to convert it into a combined cycle generating facility. Ms. Heyden reported the settlement agreement the City entered into with Calpine required improvements for Phase 1 to be completed within six months of operation date and the additional improvements completed within six months of the Phase 2 operation date and the improvements were on schedule.

MOTION to note receipt and file.

M/S: Gomez, Livengood.

Ayes: 5

Mayor Esteves commented that the Council's policy was to adjourn at 11:00 p.m. and asked the City Manager if there were any remaining items that required attention. Acting City Manager Lawson asked that the Council proceed.

**5.
Midtown Transit Sub-Area
Visioning Project**

Acting Planning & Neighborhood Services Director Tambri Heyden reported this item was continued from the February 15, 2005, Council meeting and would include the same presentation given to the Council Transportation Subcommittee on the status of the Midtown Transit Sub-Area visioning project. Ms. Heyden further reported the final alternative concept

plans would be coming to the Council April 5, 2005. Ms. Heyden introduced the consultants Leslie Gould, lead consultant, and Bill Lee.

Leslie Gould reviewed the Milpitas Transit Area Concept Plan and responded to questions from the Council. Bill Lee presented market capacity and trends and economic and land use analysis and responded to questions from the Council. Ms. Gould reviewed the overall vision and goals for the preliminary concept plan, alternative policy choices, and key steps to move forward.

MOTION to note receipt and file the status report.

M/S: Gomez, Livengood.

Ayes: 5

Due to the lateness of the hour, Acting City Manager Lawson requested that item 13 be heard before the meeting was adjourned.

BIDS & CONTRACTS

13. Recruitment Agreement Bob Murray & Associates

Councilmember Polanski removed this item from the Consent Calendar and stated that she noticed in reviewing the item, it was for conducting a series of recruitments for the Fire Chief, Economic Development Manager, and Planning and Neighborhood Services Director and inquired what was the plan to recruit a new City Clerk.

Human Resources Director Cherie Rosenquist responded staff was already in the process of doing an in-house recruitment for City Clerk using HR staff.

Mayor Esteves asked how Bob Murray was selected. Ms. Rosenquist responded several companies that do executive recruitments were asked to submit proposals and in consultation with the City Manager, Bob Murray was selected. Mayor Esteves asked that in the future, all firms contacted be listed because he thought that was relevant information.

MOTION to authorize the City Manager to execute an agreement with Bob Murray & Associates, subject to approval as to form by the City Attorney, in an amount not to exceed \$45,000 for the administration of recruitment and selection for Fire Chief, Economic Development Manager, and the Planning and Neighborhood Services Director.

M/S: Gomez, Giordano.

Ayes: 3

Noes: 2 (Esteves, Polanski)

12. Amend Classification Plan

This item was not discussed by the Council and no action was taken; the item was carried forward to the next City Council agenda.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:22 p.m.

Gail Blalock
City Clerk

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council
Date of Meeting: March 15, 2005
Time of Meeting: 6:00 p.m. (Closed Session)
7:00 p.m. (Public Business)
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano and Polanski. Councilmember Livengood arrived at 6:45 p.m. but did not attend the Closed Session.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following three items listed on the agenda:

1. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency designated representatives: Charles Lawson and Cherie Rosenquist
Employee Organizations: Protech, MEA, MSA, LIUNA, MPOA, IAFF, and Unrepresented Employees
2. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
(Pursuant to Government Code Section 54956.8)
Property: Calvary Assembly of God – APN Nos. 092-37-044, 045, and 046
Agency Negotiators: Mike McNeely and Greg Armendariz
Negotiating Parties: City of Milpitas and Calvary Assembly of God Church
Under Negotiation: Terms and Conditions for Acquisition of Property
3. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Pursuant to Government Code Section 54956.9[c])
Initiation of Litigation
Number of cases: (1)

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

There were no minutes scheduled for approval.

SCHEDULE

Councilmember Livengood reported a Bay Area Water Supply and Conservation Agency (BAWSCA) meeting was scheduled for March 17, 2005, at 7:00 p.m. in Foster City, and on March 23, 2005, the BART Corridor Task Force would be meeting at 3:00 p.m. at Milpitas City Hall.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Gomez.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation declaring March 2005 as "Colorectal Cancer Awareness Month" and presented it to Carol Baker, a representative from the American Cancer Society and Government Relations Chairperson. Ms. Baker stated Colon Cancer was 90% preventable and asked "when are you going to prevent your Cancer from happening?"; going in and

getting the screening done provided a 90% chance that one would not get Colon Cancer and urged everyone to start getting it done at the age of 50.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Jacquelyn Woodworth, a Milpitas homeowner since 1988, stated she was presently employed at Terrace Gardens as receptionist and read a statement stating travesty was an understatement for the actions taken against the Board of Directors of Terrace Gardens at the last Council meeting. Ms. Woodworth asked if had occurred to any of the Council to confirm allegations prior to making a public spectacle of them; one member of the Council had first-hand knowledge of the situation; she hoped that when this was settled and the Council was better informed, that their apologies would be half as public as the allegations. Ms. Woodworth suggested the Council visit the property, partake of an evening meal, and chat with an arbitrary selection of residents rather than forming an opinion from information from a small vocal minority.

ANNOUNCEMENTS

Acting City Manager Charles Lawson announced this was the last Council meeting for City Clerk Gail Blalock, who was retiring, and also Human Resources Director Cherie Rosenquist, who announced earlier in the day that she was moving on to another city, and he wanted to take this opportunity to thank them both for their service to the City of Milpitas.

Mayor Esteves said he appreciated and congratulated Gail Blalock on her new endeavor and also to the HR Director Cherie Rosenquist to her new endeavor; and thanked both for their services in our beautiful City of Milpitas.

Vice Mayor Gomez requested the meeting be adjourned in memory and honor of Milpitas Police Officer Steven Thompson.

Mayor Esteves announced the current Commission openings and encouraged residents and volunteers to fill out application forms; congratulated staff and the City for once again being named Tree City USA by the National Arbor Day Foundation, honoring a commitment to the community forest (and it was the third time Milpitas had received this National recognition); he was proud to represent Milpitas in a parade in Cupertino entitled Asian American Lunar New Year's Celebrate Unity; the Knights of Columbus had selected its Citizen of the Year as well as the Police Officer of the Year and the Firefighter of the year, and would be honoring these outstanding citizens of Milpitas on March 19, 2005, at the Community Center; and the Mayor's State of the City address, sponsored by the Milpitas Chamber of Commerce, would take place on March 29, 2005, at 6:00 p.m. in City Hall.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Acting City Attorney Richard Pio Roda inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. There were none.

MOMENTS OF REFLECTION

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council.

Councilmember Polanski said she wanted to take the moment to reflect on the City's City Clerk Gail Blalock, who had been serving Milpitas as City Clerk for almost 22 years, and reflecting on the City's Code of Ethics, commenting that Gail had probably upheld the Code to the highest degree in all of her years serving as Milpitas' City Clerk; many were going to miss her, but she did know Gail was going to enjoy her endeavors as she leaves Milpitas, and thanked her very much for all of her service to Milpitas as it was greatly appreciated.

Councilmember Livengood said he was remiss in not chiming in when the City Manager announced these retirements earlier, and following on Councilmember Polanski's sentiments, said Gail was one of those people who was what he called an unselfish employee, she always was looking out after everybody else, helpful at all times; when he was Mayor, she was

incredibly helpful to him, when she was a fairly new City Clerk back in the mid 80s, and she did a wonderful job, and he wished her all the best in her retirement, hoped she and Tom would have a wonderful time, and asked her to come back and see everyone. Councilmember Livengood further stated he didn't have the opportunity to work with Cherrie Rosenquest you for long, but wished her all the best in her new endeavor as it was exciting for her.

AGENDA

City Manager Lawson requested item 16 (Resolution regarding Animal Regulation Appeal Board and Ordinance No. 54.24) be removed from the agenda and item 18 (Resolution Amending the Classification Plan) be moved up as it was continued from the last Council meeting. Mayor Esteves suggested item 18 be considered just ahead of item 7. Vice Mayor Gomez requested item 8 (Final Ethics Report) be deferred to another meeting when the agenda contains fewer items.

MOTION to approve the agenda as amended by the removal of item 16, moving item 18 to be heard just before item 7, and deferring item 8 to a future agenda..

M/S: Livengood, Giordano.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar..

Acting City Manager Lawson reported staff would like to add item 11 (O'Toole Elms) to the Consent Calendar with the recommendation to approve Concept D as the Council had been provided with additional information. Councilmember Polanski said she objected to placing item 11 on the Consent Calendar. Mayor Esteves said it would remain on the open agenda for discussion.

Councilmember Polanski requested item 17 (Open Government Ordinance) be removed for discussion.

Mayor Esteves asked questions concerning item 15 (Uniform Fire Code Annual Training Conference) item 21 (Street Resurfacing Project), item 23 (Agreement Amendment with GSS Consulting), and item 27 (Amendment Agreement with Mary Krost & Associates) and said he wanted to share his comments but would not be removing any item from the Consent Calendar.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 17, in accordance with the staff recommendations.

M/S: Gomez, Giordano.

Ayes: 5

***3. Program Cuts in the Proposed Federal Budget**

Approved the authorization of the Mayor's signature expressing the opposition to the proposed elimination of the HUD Community Development Block Grant Program being proposed by the Bush Administration.

***6. Arts Commission 2005 Work Plan**

Approved the Arts Commission's Work Plan.

***12. Site Modifications 1594 Pebble Beach Court**

Approved Site and Architectural Approval Amendment No. SA2004-123 based on the findings and recommended special conditions.

***13. Berryessa Creek Project**

Authorized the Mayor to send a letter on behalf of the City Council to The Honorable Mike Honda in support of requesting additional funding for the Berryessa Creek improvements.

***14. Edward Byrne Memorial Justice**

1. Approved the Memorandum of Understanding entitled "Interlocal Agreement, Agreement Between Cities and the County of Santa Clara, 2005 Byrne Justice

Grant (JAG) Program	Assistance Grant (JAG) Program Award.”
	2. Authorized the City Manager to sign the Interlocal Agreement.
*15. Uniform Fire Code Association Annual Training Conference	Approved out of state travel request for Captain Paul Inouye to attend the Uniform Fire Code Association Annual Training Conference.
*19. Adopt Resolution of Local Support for SB 680	Adopted Resolution No. 7509 communicating the local support of the elected officials to the State Legislature for SB 680 proposed by Senator Simitian.
*20. Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery (Project No. 4214)	Adopted Resolution No. 7510 granting initial acceptance of the project subject to the one-year warranty period and reducing the faithful performance bond to \$39,569.12.
*21. 2004 Street Resurfacing Project (Project Nos. 4182/4223)	Adopt Resolution No. 7511 granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$135,106.25.
*22. Quint & Thimmig LLP	Authorized the City Manager to execute agreement with Quint & Thimmig LLP for legal services related to the formation of a Community Facilities District, subject to approval as to form by the City attorney.
*23. GSS Consulting	Authorized the Acting City Manager to execute an agreement amendment with GSS Consulting for continued project management and coordination services on various Capital Improvement Projects in the amount not to exceed \$119,600.00, subject to approval as to form by the City Attorney.
*24. Coyote Creek Trail, Reach 1 (Project No. 4206)	Authorized the Interim City Manager to execute an agreement with Hill Associates for consulting services for Coyote Creek Trail, Reach 1, Project 4206, in the amount of \$23,645.00, subject to approval as to form by the City Attorney.
*25. Grout Injection on the Mechanic's Pit at Fire Station No. 1	<ol style="list-style-type: none"> 1. Rejected the bid from Rainbow Waterproofing and Restoration (\$19,301.00). 2. Rejected the bid from The Pressure Grout Company (\$22,150.00). 3. Authorized the Interim City Manager to execute a contract with Ashron Construction & Restoration, Inc. to perform the grout injection service in the amount of \$27,525.00 including tax, subject to approval as to form by the City Attorney.
*26. Krost & Associates	<ol style="list-style-type: none"> 1. Approved the amendment to the agreement with Mary Krost & Associates to provide safety training to City of Milpitas employees, subject to approval as to form by the City Attorney. 2. Authorized the expenditure in the amount not to exceed \$19,779.00.
*27. Street Rehabilitation (Project Nos. 4200, 4182, 4222, and 8149)	Authorized the City Engineer to execute the Balancing Contract Change Order for Fanfa, Inc. in an amount not to exceed \$111,342.91 for Singley Area Street Rehabilitation, Phase III (Project No. 4200); Hamilton Area Street Resurfacing (Project No. 4182); Marylinn Drive sidewalk (Project No. 4222); and Sports Center Master Plan Improvement, Phase I (Alley Way) (Project No. 8149).
*28. South Bay Water Recycling Program	Authorized the City Engineer to execute a change order in the amount of \$19,828.48 to Preston Pipelines for South Bay Water Recycling Program (SBWRP) Infill Phase M-2, M-3 (Project No. 6093).
*29. Police Department Ammunition	Awarded the bid for the Federal ammunition to San Diego Police Equipment Co. in the amount of \$16,526.15 and for the Winchester ammunition to Adamson Industries in the amount of \$8,930.63.

***30.
Aquatic Eco System
Aeration System**

Awarded the bid for the purchase and installation in the Hall Park lagoon at Abbott Ave. and LaHonda Dr. of an Aquatic Eco Systems Aeration system No. GL96-230 to North Bay Ponds and Water, and authorize the City Manager to execute a contract with North Bay Ponds and Water in the amount of \$8,925.14, subject to approval as to form by the City Attorney.

***31.
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$5,231.72 to VMI, Inc. for a 40" LCD Mitsubishi Monitor. The monitor is used to support the 911 dispatch center as part of the GIS map display system used to dispatch fire and police emergency calls. (Funds are available for this purchase from CIP project 3389 "Public Safety Technology").
2. \$5,585.00 to Medtronic Physio-Control Corporation for a one year technical service and support agreement for the seven (7) LIFEPAK 500 automatic defibrillators and five (5) LIFEPAK 12 manual defibrillators currently in use by the Fire Department. (Funds are available for this purchase from the Fire Department operation budget).
3. \$74,793.98 to Advanced Traffic Products for the purchase of fifty-five (55) 3M Opticom – 2 Channel Phase Selector Cards for emergency vehicle traffic signal control. The City of Milpitas was one of the first cities in the Bay Area to install 3M brand Opticom traffic signal preemption controls. The equipment allows a police or fire emergency vehicle to temporarily disrupt traffic signal operations by forcing the traffic signal to turn green for the direction of the approaching emergency vehicle thus reducing the response time to incidents. The Opticom system is installed on every police and fire vehicle as well as every City maintained traffic signal. The original control cards deployed 15 years ago need to be upgraded to provide encrypted signal capabilities that prohibit a non-emergency response vehicle from preempting the traffic signals.
4. As the City's mutual aid partners have already purchased the newer Opticom technology, the upgrade will allow the City to remain compatible and be able to render and receive mutual aids. Advanced Traffic Products is the sole authorized 3M distributor of this product in seven (7) western states including California. This type of sole source purchase is authorized by Municipal Code section I-2-5.03-4. (Funds are available for this purchase from CIP project 8166 "Traffic Signal Preemption System" and CIP project 4167 "Traffic Signal Modifications").

PUBLIC HEARINGS

**1.
Introduce Ordinance No. 124.37**

Acting Planning & Neighborhood Director Tambri Heyden reported that since the December 21, 2004, Council meeting, the Sign Code Task Force had met three times to achieve greater consensus and address a new issue that had been raised by the Real Estate industry; three changes had been added to the Ordinance since the Council saw it last in December with the first change being to the definition of individual violations, the second change required a written notice for the first offense of an individual violation after which subsequent offenses would not be noticed, and the third change was the abatement of life safety hazards. Ms. Heyden presented a summary matrix of proposed enforcement remedies for signs based on the type of violation, location, and violation severity.

Ms. Heyden further reported that the Task Force was proposing continuation of quarterly Task Force meetings that would extend for a year to assist with the Outreach Program, to provide input on the materials staff developed in the Outreach Program, and to monitor compliance; and the Task Force would also look at the Sign Code to determine if any fine tuning adjustments were needed, as well as the Political Sign section of the Code.

Ms. Heyden, addressing the new issue that was raised regarding eliminating the current 3-ft. setback from the curb for real estate signs in the private right-of-way, said the Task Force was proposing eliminating the requirement, subject to several provisions which included keeping clear of driveways, curb returns, some Light Rail zones, all handicapped access areas, and a

15-ft. distance from the curb return in the intersection; the last piece of that proviso prohibited attachment of signs to public property such as street trees, traffic signs, utility boxes, utility cabinets, benches, hydrants, structures of that kind in order to prevent damage as well as safety issues; the Task Force also decided to put the prohibition in the Ordinance and reflect it so the Council could make the decision; the Planning Commission and the Economic Development Commission also supported the prohibition. Ms. Heyden noted that the Ordinance had been reviewed in terms of CEQA provisions and was found to be exempt as there were no significant impacts on the environment.

Ms. Heyden pointed out a typo in the Ordinance under Administrative Citations (30-9.04 C3) on page 26 addressing the third offense, it should read 3rd and subsequent offenses; addressing appeals, stated when the Neighborhood Beautification Ordinance was proposed to the Council, the issue of appealing a decision by the City's Administrative Officer was raised and the Council at that time decided it did not want to take on the appeals; the Ordinance before the Council, upon request of the Task Force, was that a decision by the City's Administration Officer would go to the City Council; and, the correct number of the Ordinance was 124.27 NOT 124.37.

Mayor Esteves inquired if an appeal would be heard at a special session of the Council. Ms. Heyden responded it would be a regular Council agenda item, she did not foresee there would be a lot of them; and there had not been a single question in the five years the NBO had been in place.

Mayor Esteves inquired if off-site signs, especially those near the freeway and used jointly, would be allowed. Ms. Heyden responded, yes, that right now in the Sign Code, off-site signs were prohibited; the proposal would allow them, subject to a Sign Program being proposed; and the terminology would be, the Joint Sign Program.

Mayor Esteves, addressing the Temporary Sign Registration, inquired if the Task Force had any objections. Ms. Heyden responded staff had provided the form that had been developed and there had been no Task Force objections.

Mayor Esteves reiterated that the major change was the deferment of the pro-active process of looking at violations. Ms. Heyden responded that the pro-active proposal was not before the Council tonight.

Councilmember Giordano inquired as to when the discussion of political signs was made. Ms. Heyden responded the issue had been raised at the last Task Force meeting held prior to the December 21, 2004, Council meeting, and was part of the presentation made to the Council in December.

Councilmember Livengood inquired if a homeowner who had a corner lot would be restricted to one campaign sign on the lawn. Ms. Heyden said this ordinance before the Council did not make any changes to the Political Sign section. Councilmember Livengood, addressing private property, inquired if political sign restrictions were included. Ms. Heyden responded, no, it was a separate section under the Ordinance.

Vice Mayor Gomez, referring to pro-active, said he understood the Council had not been interested in going that route. Ms. Heyden responded staff misunderstood and had the impression that with the quarterly Task Force meetings, a recommendation could be made at some later date when the Outreach was completed and the Ordinance had time to take effect and residents and businesses became aware of what the expectations were.

Vice Mayor Gomez, addressing the 15-foot distance from the curb return and prohibiting real estate signs on the corner curb, inquired if it was because of an ADA issue. Ms. Heyden responded, yes. Vice Mayor Gomez inquired if an ADA ramp did not exist, did the ADA issue still exist. Ms. Heyden explained it was not only ADA, it was also sight distance; the Task Force felt that 15 feet back was adequate distance, allowing someone to make a right-hand turn without obstructing their line of sight.

Mayor Esteves opened the public hearing and invited comments.

A man said he represented a storage business in Milpitas on South Main Street, which was part of a management company representing 46 different stores across the United States, and stated he was here representing his company based out of Georgia; as part of the company's advertising protocol, which was an aggressive structure to bring business to the City of Milpitas and upgrade the reputation of the town and the businesses in it; this information was brought to him on Friday; and questioned if there was a location - of something of more of a layman's terms - that could be approached to the businesses and people in the Community where they could understand this; as far as new residents, he had just relocated with this company management from Sacramento as recently as January and was at a loss for this information; although, other than the fact that it seemed to have great restriction on the advertising market structure, the Storage facility had small signs and balloons and advertising marketing where it wanted to go aggressively at the consumer and bring business into this town; inquired if there was a place to find this information, and at that time, also find the protocol as to how to address it to the City Council.

Acting City Manager Lawson said Ms. Heyden and the Planning staff would work with the gentleman off line.

Heidi Wolf-Reid, a member of the Task Force, said they were a little confused on the 15 ft. setback; they had a lot of discussion on the 4 feet, which was an ADA issue; and other than that, she thought they had gone over most of the rules and were pretty happy with it; however, she was unsure right now after the discussion here what she wanted to do. Ms. Wolf-Reid said one of the reasons the review of the Administrative fine was done was because there was no enforcement mechanism; there was now enforcement mechanism added (the abatement process) and she was not sure why two mechanisms were needed when there was none before; she thought adding the abatement process to the Ordinance should take care of any problem; and she felt that Outreach and information for new businesses and existing businesses, particularly the ethnic communities, was quite important

MOTION to close the public hearing.

M/S: Giordano, Gomez.

Ayes: 5

Vice Mayor Gomez, addressing the 15-foot setback from the curb return and a 3-ft. real estate sign being an obstruction to a line of sight, inquired if all real estate signs were 3-foot tall "A" frame signs. Ms. Heyden responded her understanding from the Real Estate Industry was that a 3-foot "A" frame sign was a prototype. Vice Mayor Gomez stated he had concerns with Administrative fines and sign attachments to a City pole, and did not want to see anything that could be deemed restrictive.

Councilmember Polanski said she had no problem with the 15-feet from the curb line requirement; she thought it made sense both for the line of sight and ADA compliance; she had difficulty with the other types of signs; and believed the City and the Council needed to look at being pro-active for everything

Councilmember Giordano congratulated Ms. Heyden and the Task Force commenting that this was a lot of work and a tremendous effort. Councilmember Giordano said she wanted to keep the community as business friendly as possible; would like to eliminate Administrative fines; felt the abatement process worked and did not want to penalize new businesses; was concerned about being able to determine where the 15-foot setback was; would support having a limited number of signs on private property; and would not want to limit private home owners' right to free speech.

Ms. Heyden requested clarification from the Council stating she thought there was a misunderstanding of the Summary Abatement; if the Administrative Citation powers were

removed, Summary Abatement for signs could not be enforced; and the only powers for abatement were under the NBO.

Mayor Esteves said he agreed with the use of the abatement process; liked off-site signs for businesses; and was comfortable requiring temporary sign registration.

Vice Mayor Gomez, commenting on Administrative fines and implementing a thorough education policy, stated he would like to see how the education process dealing with signs worked before forming an opinion; he was impressed with the number of sign issues staff dealt with and how few problems were encountered without having an Administrative fine process; and referencing political signs, expressed concern about restricting the number of political signs on private property. Vice Mayor Gomez asked the City Attorney if changes were going to be made to the ordinance, how would that be handled and would the Council adopt the ordinance today or would it have to be brought back with the changes. Acting City Attorney Richard Pio Roda said he thought the ordinance could be adopted today with the changes.

Ms. Heyden read the title of Ordinance No. 124.27.

MOTION to waive reading beyond the title.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to introduce Ordinance No. 124.27 with removal of the Administrative penalties and removal of prohibitions regarding real estate signs being attached to the poles.

M/S: Gomez, Giordano.

Mayor Esteves said if the Administrative fines were taken out, there could not be an abatement process and inquired as to how the violations would then be handled. Ms. Heyden responded if the entire Administrative Citation section was taken out, it would include the Summary Abatement procedures. Mayor Esteves inquired if it were violated and it was a safety hazard, what would be done. Ms. Heyden said she would defer to the City Attorney; as she did not know if staff would have the ability to do anything. Acting City Attorney Pio Roda said if the Sign Ordinance did not have any specific Administrative fine requirement, the fines would be eliminated and then any of the other provisions that related to the removal of the signs would apply because of public safety to the public property.

Ms. Heyden inquired if it was the Council's desire to remove the ability to levy fines for violations and still have enforcement.

Vice Mayor Gomez said he would like to take out the Administrative fine process.

Ms. Heyden suggested that since staff needed to look at the language very carefully, possibly the first reading could be postponed.

Councilmember Giordano inquired what process staff used for enforcement. Ms. Heyden responded fines and Summary Abatement were used if a violation fell under the NBO; however, signs did not fall under the NBO; signs that fell under the NBO included lawn parking, converting a prior lawn to paved area, accumulation of garbage and debris.

Vice Mayor Gomez said he did not have a problem with placing language in the Ordinance giving staff authorization to remove or confiscate signs placed on City trees or light posts; however, he was concerned about imposing Administrative fines.

The Acting City Attorney clarified the Council's motion was to eliminate any fines connected with the offending signs but be able to remove them if they presented some sort of safety hazard; he suggested the Council go through the Ordinance again. Ms. Heyden agreed as she was concerned about the Summary Abatement; she did not believe staff had the ability to use

Summary Abatement powers that were in the NBO for sign violations. Mayor Esteves agreed that if there was no abatement process, you would not be able to even remove the signs.

Neighborhood Services Specialist Gloria Anaya clarified that there was a process in place for any sign blocking ADA access; if nothing else was added to the current Sign Ordinance, staff could confiscate the signs and charge the owner a \$10 fine to reclaim the sign. Ms. Heyden reiterated that staff would not have the ability to use Summary Abatement for violations on private property.

Vice Mayor Gomez said he had no problem if staff wanted to bring this back in a couple of weeks with recommendations and for discussion.

Councilmember Livengood expressed concern that the fines were a little high, he thought it could be done without the actual fine, and staff needed to make sure the Ordinance reflected that. Ms. Heyden said she thought staff understood that Vice Mayor Gomez and Councilmember Giordano were suggesting staff eliminate the ability to levy fines regardless of the fine amount. Councilmember Livengood inquired if it were possible to have all the abatement of the signs, all the other parts of this Ordinance, but not have a fine attached. Ms. Heyden said staff felt that could be done, but felt there would be limited situations where the Summary Abatement could be used, especially for severe life safety hazards where staff cost would be incurred to take care of such a violation.

Councilmember Livengood inquired if an abatement process could be placed in the Ordinance without having the particular fines listed in Section C. Acting City Attorney Pio Roda confirmed that could be done.

Councilmember Giordano commented she was looking at being able to put some teeth into the Ordinance and be able to make sure that everything was adhered to, but without the actual fines.

Mayor Esteves, referring to Councilmember Livengood's suggestion, felt that reducing the penalty or fine, or increasing the penalty if they don't comply, with a longer number of days (i.e., 30 days or 60 days) would be an incentive; and suggested staff iron out the technicalities of the abatement process and bring the Ordinance back at the next Council meeting.

Ms. Heyden requested clarification on what it was that staff was going to bring back to the Council. Mayor Esteves responded reduce the amount and also the number of days of non-compliance; give them more time, but have a time limit. The Acting City Attorney requested clarification that the Council desired a sliding scale, increase the penalty, and the number of days it took to close the violation. Mayor Esteves said that would be his suggestion.

Vice Mayor Gomez commented that both scenarios were being looked at - no fines and lower fines and then increasing them as time goes on. Ms. Heyden said that was what staff was hearing.

Ms. Heyden suggested postponing the hearing to the April 5, 2005, Council meeting. Mayor Esteves noted the hearing was closed; if another amended ordinance was presented, would the Council be required to hold another public hearing. Ms. Heyden said it might have to re-advertise. Mayor Esteves advised staff to re-advertise again to get public comments. The Acting City Attorney concurred.

There was no vote on the motion.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:24 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano, Livengood, and Polanski.

**RA3.
MINUTES**

There were no minutes scheduled for approval.

**RA4.
AGENDA**

MOTION to approve the agenda as submitted.

M/S: Polanski, Gomez. Ayes: 3 Absent: 2 (Giordano, Livengood)

Councilmembers/Agency Members Giordano and Livengood were out of their seats when the vote was taken.

**RA5.
LIBRARY DESIGN
PROGRESS REPORT**

Projects Manager Mark Rogge reported the Library design was halfway through the Schematic Design Phase, and the project was on schedule and on budget. Mr. Rogge presented layouts of the first and second floors and entry ways and described the Market Place where all the most popular items in the library that people might want to come to immediately. Mr. Rogge said staff was working on other things that might be seen in the lobby, such as a little café area and market place area, and staff was also working on the exterior elements of the building. Mr. Rogge also presented an update on the garages reporting that five proposals for the MidTown East and MidTown West parking garages were received, all five were interviewed, and Chong Partners was selected; staff was in negotiation with them and would be bringing that to the Council probably at the next meeting.

MOTION to note receipt and file the progress report on the Library design.

M/S: Livengood, Gomez. Ayes: 5

**RA6.
PUBLIC ARTS POLICY
FUNDING
RECOMMENDATIONS**

Finance Director Emma Karlen reported on February 15, 2005, staff proposed refinement of the public arts policy and received direction from the Council to meet with the Council CIP Subcommittee, the Council Finance Subcommittee, and the Arts Commission for recommendations on the application of the 1.5% formula and provide a better definition for eligible CIP projects. Ms. Karlen said a major project was defined as projects that add value or increase the value to the City and were not intended to be repair and maintenance in nature; the 1.5% formula would also apply to actual CIP expenditures instead of using the budget; the main reason was because sometimes when a project was finished under budget, the money was usually re-appropriated to another project; therefore, this was more accurate funding and not double accounting for it.

Councilmember Giordano said a question was raised by one of the Alliance for the Arts members if actual expenditures for a project (for example a \$900,000 project) exceeded the \$1 million threshold, would there be some way to guarantee that the project would be charged the 1.5%? Ms. Karlen responded that could be included if it exceeded the threshold because it looked at actual expenditures versus the budget.

Councilmember Polanski inquired what was the reasoning for the \$1 million threshold versus the discussion for the restrictive projects or grants as well as taking them out. Ms. Karlen said she thought the \$1 million threshold was just a recommendation that had been suggested by the Finance Subcommittee to look at; there were many smaller projects that were under that threshold that were not intended to be major CIP projects.

Vice Mayor Gomez, speaking to the \$1 million threshold, said at the last meeting, the one thing Councilmember Giordano and he noticed was that there was clear consensus, at least from the majority of the Council, that they wanted this to apply to all major Capital Improvement projects; and when he and Councilmember Giordano met, they looked at the CIP projects and for the most part, most of them cost more than \$1 million and that was where the number came from; what they wanted to avoid having happen, because the current definition stated repair and maintenance, questions later on as to whether construction of a new traffic signal or construction of new ADA ramps would qualify.

Councilmember Giordano concurred with Vice Mayor Gomez stating that they wanted the policy to be self-generating, self-funding; she was also concerned about the issue of maintenance of the art projects that that there was not enough participation from the Alliance for the Arts group, and that was the reason for increasing it to four members from the Alliance on the Public Arts Committee.

Councilmember Livengood said he would prefer to emphasize what the Council had agreed upon and the significant impact that would have on public art in the City; he thought the 1.5% was a very strong number and showed a strong commitment on behalf of the Council; he thought the memo from Vice Mayor Gomez and Councilmember Giordano outlined some very important additions the Council hadn't gotten into, but it did serve as a reminder that there was going to be a framework associated with this. Councilmember Livengood thanked everybody who worked on this and said he thought the end project was going to be a dramatic improvement for Milpitas.

Mayor Esteves said he also wanted to mention that he thought one of the Arts Commission goals was to pursue grant writing, fund raising, and sponsorship to continue to seek more funds for public art.

Bill Foulk, Arts Commission, thanked the Council and said he echoed Councilmember Livengood's comments about how far this had come; it was encouraging to see that there was going to be a policy that would fund the arts in a significant way. Mr. Foulk further stated the only comment he had would be in regard to the one issue that seemed to be in conflict, and that was the idea of a \$1 million threshold; the idea of the \$1 million threshold came to him as a surprise, he wasn't sure why it was proposed, and thought it was a potentially harming issue that could make it so that there was very little funding for the arts during those years when we are not putting any major projects through. Mr. Foulk said he really didn't see a reason for a \$1 million threshold and would like to be able to see funding to continue even during the years when major project were not being put out.

Julie Cherry thanked the Council on behalf of every person who drives through the City, lives in the City, works here, or even visits because she really believed that this push for public art was going to make a big difference in Milpitas and the fact that each and every one of the Council was supportive of the community being enhanced through art. Ms. Cherry said she had come to all the meetings and had done quite a bit of research in public art policies, and restrictions on CIP funds; had evaluated 21 different cities and had a grid; what she had learned about putting these thresholds of \$1 million - there were 3 of the 21 cities that did that of the ones she evaluated - Denver, New York City, and Mountain View, CA - and it seemed to her in looking at the history of their public art policies - they don't start out with a threshold, they start out with a policy that is that the city is going to show support of public art through providing a percentage of their budget in their CIPs for public art, and then as that program grows, and as the public art portfolio grows, they begin to move their policy onto the private sector as well; so, as businesses come in, then they begin to ask for contributions from businesses to this fund; and as that contribution raises, the City's contribution lessens through putting on these thresholds; and she would envision that the City steps forward and shows its commitment to doing this and models for the businesses coming in that this is something that is important to them, and eventually when the portfolio was large enough, then you can begin to move this financial contribution onto your private section; and at that point, you raise the thresholds and lower the amount that the City provides into the fund; some of the cities she evaluated had a \$50,000 threshold, \$500,000, and \$250,000, and \$300,000, the rest did not have any thresholds.

Vice Mayor Gomez said with respect to the threshold, there were a lot of questions as to what was going to happen in the future, and he was willing to give this a few years so that the Council could look at the CIP at a later date and see how it applied to later projects; he was willing to defer that but did want it spelled out in the ordinance simply because he did not want this tug of war going on later as to what projects were going to be repair and maintenance and what projects the 1.5% could be applied to.

MOTION to approve the staff recommendations regarding the Public Arts Ordinance and direct the City Attorney to develop a Public Arts Ordinance consistent with staff recommendations as well as the following statement of purpose and additional guidelines provided in the memo, with the exception of item 1 (the \$1 million threshold) and that that be spelled out in the ordinance and be re-evaluated within three years.

M/S: Gomez, Livengood.

Councilmember Giordano said she would love to concur but felt she had compromised and had come a long way to what was developed tonight; she would support the motion with a \$1 million threshold as she believed the placement of art was for large projects. Councilmember Giordano further stated she would be voting against the motion based on that alone; if the \$1 million threshold was included, she would vote for it.

Mayor Esteves said he felt the motion was responsible, anything could be reviewed at any time, and thought three years was generous, and he would be supporting the motion.

Robin Hays, Arts Commission, said at the very first meeting that they had about the percent to the arts; they talked about trying to get things going, get things jump started, and one of the ways might be buying things that were reasonable and that are massed produced that are art; this to her sounded like it could be limiting that; she was not saying that they might not do that, but thought it could be a problem and could limit some opportunities. Ms. Hays stated she thought that if you have to always have original works of art, you would be getting so much less for the money; and if we have all original works of art, the cost was going to be 20 times more than if mass produced pieces were used, or even medium produced pieces; but if you would say everything had to be an original piece of art, we're going to get like 3 pieces where we could maybe get 30. Vice Mayor Gomez inquired what were the examples of pieces of mass produced that the Art Alliance had purchased in the past or something that had been done in the past in Milpitas. Ms. Hays responded the Arts Alliance had commissioned the pieces and she did not believe any of the items that had been used were mass produced.

Julie Cherry again addressed the Council commenting that the details would go into the ordinance and were not necessarily something that would have to be hashed out or discussed or even considered in the vote this evening; as far as the public art pieces, the Alliance did commission work and that was because they worked with the neighborhoods to have them design an idea of exactly what they wanted.

Bill Foulk again addressed the Council saying he appreciated Vice Mayor Gomez's efforts in trying to define what would be acceptable and not acceptable; but from the point of view of the Commissioners and the volunteers that were going to be working on these recommendations, it almost felt like they weren't being trusted; he thought they needed to be able to sit down as the new Committee for the Arts and have some freedom to decide what would be the best for the City. Mr. Foulk cited a Minute Man statute as a very nice piece of art that could very easily be purchased. Mr. Foulk said he didn't want the committee's hands to be tied with definitions of what's acceptable and what's not; the bottom line was they would bring their recommendations to the Council and the Council can turn them down if they think they are not appropriate.

Robin Hays again addressed the Council saying they would certainly go out into the community and find out what they feel is art and make sure the pieces are going to be well received before bringing them to the Council.

Mayor Esteves asked the maker of the motion if he could amend the motion to focus on the staff recommendation and the items in the memo could be considered by the Commission and then come back to the Council.

Vice Mayor Gomez restated the motion to approve the staff recommendation along with the items listed in the memo with the exception of item 1 (the \$1 million threshold) that would be deferred for three years.

VOTE ON MOTION: Ayes: 2 Noes: 3 (Esteves, Gomez, Polanski)

MOTION to accept the Public Arts Policy funding recommendation as listed in the agenda, and eliminate the \$1 million threshold; however, putting in language that it would be reviewed in three years or a certain number/period of time, and to include that the City and Redevelopment Agency would establish a Public Arts Committee composed of the membership at the Milpitas Arts Commission and four members of the Milpitas Alliance for the Arts or its successor non-profit organization.

Mayor Esteves noted Councilmember Polanski forgot to mention the 1.5% - applying the 1.5 formula. Councilmember Polanski said that was part of the staff recommendation - the four items listed; the 1.5% as outlined in the four items in the agenda.

M/S: Polanski, Esteves.

Councilmember Livengood said his issue with the motion was that there's a lot of information and a lot of suggestions in the memo he thought were appropriate and he wanted to have some indication that these issues were going to get discussed, dealt with, and brought back to the Council.

Councilmember Polanski said she had no objection, thought all the recommendations should go to the Milpitas Arts Commission for review, discussion, and then come back with recommendations and discussion to the full Council.

Councilmember Livengood inquired if that was part of her motion. Councilmember Polanski responded, yes, she would make that part of her motion. Councilmember Livengood, addressing the threshold issue - the motion he supported before was a little different than Councilmember Polanski's motion; the motion he supported before was that the threshold would become effective three years from the date of the approval. Councilmember Livengood asked if what was being said was to review it in three years. Councilmember Polanski said she thought that was the intent of what Vice Mayor Gomez had said in his motion. Mayor Esteves said that was his understanding too; his point was that it should not be an issue because at that point of time, any Councilmember could call for a review. Councilmember Polanski suggested maybe what would be appropriate for this motion to move this forward this evening was that this would come back to - for full discussion - if the threshold should be reviewed in 2-3 years or it should become effective in three years; she had no objection in reviewing it in that way. Mayor Esteves said that that issue would come back.

VOTE ON MOTION: Ayes: 3 Noes: 2 (Giordano, Gomez)

***RA7.
AFFORDABLE HOUSING
(FAIRFIELD DEVELOPMENT)**

Approved authorization to enter into negotiations with Fairfield Development L.P. to provide Agency Finance Assistance from its 20% Affordable Housing set-aside funds.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:23 p.m.

The City Council meeting continued.

RECESS

Mayor Esteves recessed the City Council meeting at 9:24 p.m. The City Council meeting reconvened at 9:35 p.m.

REPORTS OF OFFICERS & BOARDS

2. Mayor Esteves placed this item on the agenda and invited Trudi Burney to the podium.

**Wildlife Center of
Silicon Valley**

Trudi Burney, Director of City Relations, Wildlife Center of Silicon Valley, expressed appreciation to the City for supporting the Wildlife Center since it started in 1999. Ms. Burney said they were the only ones to provide rehabilitation of sick and injured wild animals for cities. Ms. Burney presented an overview of their services to Milpitas during 2004 with respect to impound, phone support, and education/outreach programs and reviewed their income and expenses. Ms. Burney challenged Milpitas to expand awareness through education and outreach to its residents and reported that continuation of their contract would include no increase in fees but they were instead looking for in-kind donations of services and supplies.

Mayor Esteves thanked Ms. Burney for coming and apologized for having to postpone her presentation a couple of times.

Councilmember Polanski inquired if there were way the City could assist by putting information on the City's web site. Ms. Burney said it would be helpful if she could be given contacts with community groups. Councilmember Polanski suggested the Chamber of Commerce and representatives were present in the audience.

**4.
Library Ballot Measure**

Principal Analyst Cindy Maxwell reported this item was continued from the February 15, 2005, meeting so the discussion could occur after the March 8, 2005, School District ballot measure; the first measure would replace the existing parcel tax with an identical parcel tax for another ten years; the second measure would add another \$12 to the parcel tax and would take effect only if the first measure was approved; both measures require a two-thirds voter approval to pass; and Melinda Cervantes, the County Librarian, was present to answer questions.

Councilmember Polanski commented that while nobody likes to talk about taxes, one of the reasons she wanted to bring this item forward was because of the importance of the library to Milpitas. Councilmember Polanski further commented that this election would be unique in that it will be a mailed ballot, which was a new way to vote, and asked the County Librarian to explain.

County Librarian Melinda Cervantes explained this would be the first mailed vote in Santa Clara County of this size and was possible because of recent changes to the State Election law; ballots would be mailed on April 4, voters will have approximately 28 days to return their ballots by mail or deliver directly to the County Registrar of Voters Office on Berger Drive, and the election will close on May 3 at 8:00 p.m.

Councilmember Polanski said she had already endorsed these measures as a private citizen because she believed strongly in the library and especially what the Milpitas Library has done as one of the busiest in the County; both measures were something she thought the Council should support, and that was why she asked that it be on the agenda.

Councilmember Giordano said she was a sitting member of the Joint Powers Authority when the vote was taken to put this on the ballot; it was a unanimous vote and she voted to put it on the ballot because she felt it important that the voters be able to decide; however, having it now come to the local level, she felt it important to look at what the issues are. Councilmember Giordano further stated she would not be supporting it as she philosophically had an issue with the unfairness of a parcel tax, she had systematically expressed that and it was not new; she was concerned that the City was building a new library and concerned about not having any analysis from staff or any look at what the dollars might be if the City was to fund it (depart from the JPA), and she would like to see that; she thought the measure may be viewed as an extension but to her, it was still a new tax; she would prefer to have more information to be able to decide and make a judgment whether this was appropriate or if there was some other process that could be used to provide the same level of service, if not a better level of service to Milpitas.

Councilmember Livengood said he was fine with the concept even though he had reservations about a parcel tax but requested that the item be bifurcated; he was willing to support a continuation of the parcel tax already on the books (Measure A), but he would not support Measure B, which was an increase in taxes and when the time came for a vote, he could support one but not both. Councilmember Livengood commented that Milpitas participates in the JPA and had flirted with the possibility of going on its own and he thought it was worth looking at again, especially when the City was building a new library; he had made his displeasure known when the JPA forced Milpitas to close the library on Mondays and did not allow Milpitas to make up the difference as had been done in the past.

County Librarian Cervantes commented that ten years ago, the reason the Board of Supervisors introduced the concept of parcel tax was because the cities, counties, and special districts, for the purposes of the Education Revenue Augmentation Fund, lost 44% of operating budgets; a significant sum of local property taxes earmarked for the library are sent to the State every year and to date, \$10.7 million has been sent to Sacramento to support programs other than the library; and there would be no reason for parcel taxes at all had those monies remained. Ms. Cervantes clarified that single-family properties with Measure A would pay \$33.66; however, multi-family properties are charged \$16.83 per unit and non-retail vacant land and other types of properties are charged by the acre. Ms. Cervantes also addressed the closing of the libraries on Mondays explaining that if cities had wanted to provide funding that would have only funded positions that eventually would have to be let go if the measures fail.

Mayor Esteves thanked Ms. Cervantes for coming and said he had always been supportive of the library because it impacts hundreds of children and residents; as a property owner, he thought it was critical to support the measures and he hoped they would be successful.

MOTION to adopt Resolution No. 7507 supporting the Santa Clara County Library District JPA May 2005 Tax Measure A (replacing the existing parcel tax with an identical parcel tax for 10 years).

M/S: Polanski, Livengood. Ayes: 3 Noes: 2 (Giordano, Gomez)

MOTION to support the Santa Clara County Library District JPA May 2005 Tax Measure B (an additional \$12 parcel tax).

M/S: Polanski, Esteves. Ayes: 2 Noes: 3 (Giordano, Gomez, Livengood)

It was noted the motion failed.

**5.
Chamber of Commerce
Space Needs**

Principal Analyst Maxwell reported that as requested by the Council, the Economic Development Commission formed a Task Force to study the Chamber of Commerce's location needs and their report was included in the Council's agenda packets; also included this evening was an updated and revised cover memo from the Task Force Chair, and Mr. Peoples was in the audience, along with representatives of the Chamber. Ms. Maxwell further reported the Commission looked at the report for a second time last night and recommended for the short term that the City assist the Chamber in pursuing outside financial resources in order to afford a quality location; one thought was to contract with the Chamber to act as the City's Visitor Bureau; and for the long term that the Chamber occupy a City-owned facility with minimum rent, specifically referring to the West Parking Garage to be built on Main Street. Ms. Maxwell noted that the Chamber did deliver a letter budget request that would be brought to the Council, which was a change from previous years, as they would be asking for some new changes, including support for a Visitors Bureau.

Don Peoples, member of the Economic Development Commission, said the purpose of the Task Force was to provide input to the EDC; the Milpitas Chamber of Commerce had served the community in a lot of ways and shared his first experience with the Chamber. Mr. Peoples further stated the real challenge for the Chamber was developing an income stream for a quality home; their basic requirements were that it be accessible to small business and the

public and the public can find them; the real problem was that rents were beyond what they were used to paying; they looked at various options and came up with three: one, that the Chamber occupy surplus property at discounted rents; two, somehow for them to receive more money to afford a quality location; and the third option was to occupy a city-owned facility with minimal rent. Mr. Peoples said what they really wanted to recommend was that the City consider contracting with the Chamber to perform the function of a Visitors Bureau and other possible tasks that would be of value to the City; if this could be accomplished to mutual benefit, the Chamber should be able to afford a quality permanent home.

Mayor Esteves said he really liked the idea of not just giving them funds but having them provide a service that would be needed and of mutual benefit; he thought the suggestions were great and the City would not be just giving away money.

Councilmember Polanski thanked the Commission and the Chamber for getting together and reviewing this; she thought the ideas were good but thought the appropriate way to address it was through the budget process; over the short term, she didn't think the City would be able to be much assistance because of the economy but maybe down the road; and this was something the Council would need to review in the budget process to see if it was doable but not necessarily in the near future.

Mayor Esteves inquired if the Chamber planned to come back with a budget proposal to quantify this proposal. Ms. Maxwell responded the Chamber had already submitted a budget request and because it was significantly different in nature and size than in the past, staff would be bringing it to the Council in April for direction before the budget hearings.

Councilmember Giordano suggested the Chamber may want to come up with some ideas to address with the Economic Development Manager and maybe the Chamber could take a more active role in economic development in the community; this was just one area that the Chamber may want to address with the new Manager and how the bureau might stimulate some type of business exposure or community exposure to the Chamber; and encouraged the Chamber to bring that forward.

Vice Mayor Gomez inquired if this (Visitors Bureau) fit anywhere into the Economic Development Plan coming up. Ms. Maxwell responded it perhaps fit in with the first goal to improve the image of the City.

Councilmember Livengood said he was not going to make any decisions long term for the Chamber tonight and suggested noting receipt of the information and seeing what the budget request was for this year; the long term issues would require more discussion and detail than he had seen so far.

Tom Valore said they did send forward acceptance of a lease arrangement for a facility that would forestall any financial issues for four years; they would be signing a four-year lease at a rate that was affordable and wouldn't significantly increase for the next four years; they had four years to find a more permanent solution; he was concerned that when that expires, they would have to go to a market environment and the rent could be more than twice what they are going to be paying. Mr. Valore further stated the budget request was intended to market the Chamber as a Visitors Bureau to be compensated for services they are already performing; they attempted to recognize that in the budget request, which they hadn't done before; and if the intent was to formalize that role, he thought it would have to grow a bit from what was included in the budget request at this point.

MOTION to receive the information as presented and wait for the budget request for 2005, then take a look at the long-term issue the Chamber will be faced with four years out.

M/S: Livengood, Polanski.

Ayes: 5

UNFINISHED BUSINESS

**18.
Classification Plan
Amendment**

Human Resources Director Cherie Rosenquist reported recently staff conducted a salary survey for the Economic Development Manager position; as a result, staff was recommending a salary increase for this position through an amendment to the Classification Plan; in addition, it was being recommended that the position be taken out of the current mid-management bargaining unit and placing it in the senior management group; and staff was also asking for an appropriation for the two remaining months of the fiscal year that it was anticipated the position would be filled.

Mayor Esteves expressed concern that one of the selling points for this position was that the salary was lower and would result in savings; however, it looked like the savings were not that abundant. Acting City Manager Lawson responded it still was about \$40,000 less than the position that was talked about.

Councilmember Polanski said she removed this item from the Consent Calendar at the previous meeting and one of the reason was what the Mayor had stated; when the Council discussed hiring an Economic Development Manager, one of the areas talked about was all the savings; when she saw this on the Consent Calendar (at the last meeting), there was a salary range with an appropriation of \$27,000 and she thought it important for the public to be aware of that because there had been a lot of discussion about savings.

MOTION to

1. Adopt Resolution No. 7508 amending the Classification Plan to modify the salary range for the Economic Development Manager to an annual salary range of \$107,942 - \$131,205 and be placed in the unrepresented, except senior management group;
2. Approve a budget appropriation of \$26,906 from the Redevelopment Agency Fund balance for fiscal year 2004-05.

M/S: Polanski, Gomez.

Mayor Esteves said he would rather be hiring another position but since it was decided to hire an Economic Development Manager, he wanted to do it right and would be supporting the motion.

VOTE ON MOTION:

Ayes: 5

**7.
Commission
Outreach Program**

Acting City Manager Lawson reported at the March 1, 2005, Council meeting, Councilmember Giordano requested a report back on the progress made on the expanded outreach program to encourage more residents to apply for appointment to City Commissions. Mr. Lawson responded that since the last meeting, staff had printed a list of Commission openings on the Council agenda, the Mayor had publicly announced the openings, an announcement was included on Channel 15, an announcement was placed on the electronic message board (on Calaveras), and an article was written for the next City newsletter. Mr. Lawson also reviewed several items staff was working on.

Councilmember Giordano commented that she had been doing her own outreach and had appeared on the local high school channel newscast to the students encouraging applications for the Youth Advisory Commission. Councilmember Giordano asked if the message board was being used at the Sports Center. City Clerk Gail Blalock responded she couldn't answer that for sure, however, the Recreation staff was responsible for the message board on Calaveras, so they may have also included the message at the Sports Center.

Councilmember Giordano inquired about the timeline for including a message on utility bills. Ms. Blalock responded that in looking into it, she learned that an insert may be possible at little cost instead of just a 70 or 90 character message, and she would like to pursue that.

MOTION to receive the report.

M/S: Gomez, Giordano.

Ayes: 5

**8.
Final Ethics Project Report**

Deferred this item to a future Council agenda.

NEW BUSINESS

**9.
Anticipated General Plan
Amendments**

Planning Manager James Lindsay reported staff was considering four City initiated amendments to the General Plan that included Housing Opportunity Sites, Method of Calculating Residential Density, Community Warning Systems, and Storm Water Quality. Mr. Lindsay said staff was seeking direction from the Council to start the public process to amend the General Plan on the four elements.

Mayor Giordano inquired if this was a new process and how did it begin. Mr. Lindsay responded it was something new for several reasons; the policy stated within the Housing Element talks about encouraging and working with property owners in rezoning these properties; also being considered were a number of other City-initiated amendments, which was unusual in that the staff was usually very reactive to the development community but in this case, staff was suggesting making changes to some existing policies; staff was seeking some Council direction before starting the public process. Councilmember Giordano expressed concern that the way it was beginning might influence or may create in the public's view or intimidate them to come forward with their opinions, and she didn't want to see that happened and was hesitant to proceed in this fashion.

Councilmember Livengood said he was also a little concerned about this and would rather that the land owner or developer would come forward on their own; he didn't want the City to assume some costs for some developers and not others (he wanted it to be fair), and he would feel more comfortable pursuing the traditional way of handling General Plan Amendments.

Mayor Esteves commented that when a property owner presents a project, there is room for negotiation for something that may benefit the City as well.

MOTION to note receipt and file.

M/S: Polanski, Gomez.

Ayes: 5

Vice Mayor Gomez noted it was coming on 11:00 p.m. and if only one more item was to be heard, he would request that it be item 11.

Councilmember Livengood left the dais at 11:00 p.m.

**11.
Concept Design
Interpretive Historical
Display (O'Toole Elms)**

Councilmember Polanski removed this item from the Consent Calendar at the previous (March 1, 2005) Council meeting.

Assistant Planner Troy Fujimoto said that given the lateness of the hour, staff was available to answer questions.

Councilmember Polanski expressed concern that she had never seen Concept D before; Concepts A, B, and C were in her agenda packet but "D" was received this evening, the public hadn't reviewed "D", and only the Parks, Recreation, and Cultural Resources Commission saw it last night. Councilmember Polanski said it would be very difficult for her, at 11:00 p.m. when she hadn't had an opportunity to review the data presented to her at 6:00 p.m. tonight, to make an informed decision.

Acting City Manager Lawson said staff could re-agendize this item and place it on the early part of the agenda.

Senior Planner Dennis Carrington clarified what was presented to the Parks, Recreation, and Cultural Resources Commission (PRCRC) were Concepts A, B, and C, and it was his

understanding that D enjoyed elements of all three; and staff would be happy to bring it back. Planning Manager James Lindsay added that it illustrated the comments received during the PRCRC meeting.

Mayor Esteves asked if the PRCRC had a recommendation. Mr. Lindsay responded no.

**10.
Water Resources
Protection Collaborative**

Contract Engineer Mike McNeely presented a status report on the County-wide Water Resources Collaborative, formed in January 2003 after the Santa Clara Valley Water District proposed amendments to its Ordinance 83-2 that would have expanded the District's land use permitting authority, including increasing the District's jurisdiction adjacent to creeks from the existing 50 ft. to 150 ft. Mr. McNeely reported he and Acting Planning Director Heyden were representing Milpitas on the Collaborative. Mr. McNeely reviewed key results thus far, reported that a Memorandum of Consensus was adopted by all the governing bodies, and reviewed the next steps to be taken and the major issues to be resolved.

MOTION to note receipt and file the report.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Livengood)

**17.
Ordinance No. 262.1**

This item was removed from the Consent Calendar but was not discussed; the item was continued to the April 5, 2005, Council agenda.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:13 p.m. in memory and honor of Milpitas Police Officer Steven Thompson.

Gail Blalock
City Clerk